

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 226

**REPUBLIC AVIATION CORPORATION,
PETITIONER,**

vs.

NATIONAL LABOR RELATIONS BOARD

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED JULY 5, 1944.

CERTIORARI GRANTED OCTOBER 9, 1944.

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United States of America

1

BEFORE THE

NATIONAL LABOR RELATIONS BOARD—SECOND REGION

CASE NO. II-C-4826

DATE FILED 3/24/43

IN THE MATTER OF

REPUBLIC AVIATION CORPORATION,

2

and

INTERNATIONAL UNION, UNITED AUTOMOBILE AIRCRAFT &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
U.A.W.-C.I.O.

Fourth Amended Charge

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Republic Aviation Corporation at Republic, Long Island, New York, employing workers in manufacture of Military Aircraft has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that

3

1. On or about January 20, 1943, by its officers, agents and employees, terminated the employment of Sam Stone, because of his membership and activities in behalf of the undersigned union, a labor organization.

Fourth Amended Charge

2. On or about January 23, 1943, by its officers, agents and employees, terminated the employment of Robert Katz, because of his membership and activities in behalf of said union.

3. On or about January 26, 1943, it, by its officers, agents and employees, terminated the employment of Robert Bobrow and Raymond C. Kahler, Jr., because of their membership and activities in behalf of said union.

4. At all times since the dates stated above, it has refused and does now refuse to employ the above-named employees.

5. By the acts set forth above and by interrogating employees concerning the union and union membership, and by urging, persuading and warning them not to join or remain members of said union, and by prohibiting employees from soliciting union membership on their own time, and by prohibiting employees from wearing the union shop steward buttons, and by keeping union members under surveillance, and by other acts and conduct, it, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

Fourth Amended Charge

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Subscribed and sworn to before me this
24th day of March, 1943.
At New York, N. Y.

ROSE C. JAWETZ /s/
Rose C. Jawetz
Designated Clerk.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW-CIO

By BENJAMIN RUBENSTEIN,
Benjamin Rubenstein,
Attorney for charging union,
55 West 42nd Street, New York, N. Y.

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Complaint**UNITED STATES OF AMERICA****BEFORE THE****NATIONAL LABOR RELATIONS BOARD—SECOND REGION****CASE No. II-C-4826****IN THE MATTER OF**

11

REPUBLIC AVIATION CORPORATION,*and***INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W.-
C.I.O.**

12

It having been charged by International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, c/o Benjamin Rubinstein, 55 West 42nd Street, New York, New York, that Republic Aviation Corporation, Republic, Long Island, New York, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the "Act," the National Labor Relations Board, hereinafter referred to as the "Board," by the Regional Director for the Second Region as agent for the Board, designated by the Board's Rules and Regulations—Series 2, as amended, Article IV, Section 1, hereby issues its complaint and alleges as follows:

1. Republic Aviation Corporation, hereinafter referred to as "Respondent," is and has been since February 17,

Complaint

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1931 a corporation duly organized under and existing by virtue of the laws of the State of Delaware.

2. At all the times herein mentioned, Respondent has maintained its principal office at Wilmington, Delaware, and a place of business at Republic, Long Island, County of Nassau, and State of New York, hereinafter called the "Long Island plant," and is now and has been continuously engaged at said Long Island plant, in the manufacture, sale and distribution of military aircraft and related products.

14

3. Respondent, in the course and conduct of its business operations, causes and has continuously caused a substantial amount of materials to be purchased, delivered and transported in interstate commerce from and through the states of the United States other than the State of New York to its Long Island plant, and causes and has continuously caused a substantial amount of the products manufactured, sold and distributed by it as a part of its business to be delivered and transported in interstate commerce to and through the states of the United States other than the State of New York from its Long Island plant.

15

4. International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, hereinafter referred to as the "Union," is a labor organization within the meaning of Section 2, subdivision (5) of the Act.

5. Respondent did on or about January 20, 1943 discharge Sam Stone, and did on or about January 23, 1943 discharge Robert Katz, and did on or about January 26, 1943 discharge Robert Bobrow and Raymond C. Kahler, Jr., employed at its said Long Island plant.

16

Complaint

6. Respondent has, since the dates of discharge listed above in paragraph 5, failed to, refused to and continues to refuse to reinstate the employees named above in paragraph 5, to their former or substantially equivalent positions or employment.

17

7. Respondent did discharge and refuse or fail to reinstate the employees named above in paragraphs 5 and 6, for the reason that they joined or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

18

8. Respondent, from on or about March 1, 1942 to date has vilified, disparaged and expressed disapproval of the Union; has interrogated its employees concerning their union affiliations; has urged, persuaded, threatened and warned its employees to refrain from assisting, becoming members of or remaining members of the Union; has kept under surveillance union members; and, for the purpose of discouraging membership in the Union and to frustrate the self-organization of its employees at its Long Island plant, has, since in or about January 1943, prohibited the solicitation of union membership by employees at said plant on their own time before and after work and during luncheon and rest periods, and, prohibited the wearing of union shop steward buttons on its premises.

9. By the acts described above in paragraphs 5 and 6, for the reasons set forth above in paragraph 7, Respondent did discriminate and is discriminating in regard to the hire or tenure or terms or conditions of employment of the employees named above in paragraph 5, thereby discouraging membership in the Union and Respondent did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (3) of the Act.

Complaint

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10. By the acts described above in paragraphs 5, 6, 7, 8, and 9, and by each of said acts, Respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of the Act.

11. The activities of Respondent, described above in paragraphs 5, 6, 7, 8, 9, and 10, occurring in connection with the operations of Respondent, described above in paragraphs 1, 2 and 3 have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

20

12. The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act.

WHEREFORE, the National Labor Relations Board on the 24th day of March, 1943 issues its complaint against Republic Aviation Corporation, Respondent herein.

21

Issued at New York, N. Y., March 24, 1943.

CHARLES T. DOUDS
Charles T. Douds,
Regional Director,
National Labor Relations Board.

22

Answer**UNITED STATES OF AMERICA****BEFORE THE****NATIONAL LABOR RELATIONS BOARD—SECOND REGION****CASE No. II-C-4826**

In the Matter of

23

REPUBLIC AVIATION CORPORATION,**and****INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W.-
C.I.O.**

Republic Aviation Corporation for its answer to the complaint filed in the above entitled matter alleges as follows:

24

1. Admits the allegations contained in paragraph 1 of the complaint.

2. Admits the allegations contained in paragraph 2 of the complaint except that it denies that the respondent maintains a place of business at Republic, Long Island, County of Nassau, State of New York, and is and has been engaged in the manufacture, sale and distribution of military aircraft and related products; and alleges that the respondent has a place of business in the town of Babylon, County of Suffolk, State of New York, and is and has been engaged at said place of business in the manufacture and sale of military aircraft and spare parts.

Answer

25

3. Admits the allegations contained in paragraph 3 of the complaint except that it denies that the respondent is or has been engaged in the distribution of the products manufactured and sold by it.

4. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the complaint.

5. Admits the allegations contained in paragraph 5 of the complaint.

26

6. Denies the allegations contained in paragraph 6 of the complaint and alleges that the respondent has not reinstated the employees therein referred to.

7. Denies the allegations contained in paragraph 7 of the complaint and alleges that respondent discharged the employees named in paragraph 5 of the complaint because of their refusal, after due warning, to obey company rules and instructions.

8. Denies the allegations contained in paragraph 8 of the complaint except that it admits that it has for over two years past published, maintained and at all times endeavored to enforce a rule prohibiting solicitation of any type at respondent's plant; and admits that it has prohibited Robert Katz, Robert Bobrow and Raymond C. Kahler, Jr. from wearing certain alleged union shop steward buttons. And further denies that either of said actions herein above admitted were for the purpose of discouraging membership in a union or to frustrate self-organization of respondent's employees.

27

28

Answer

9. Denies each and every allegation contained in paragraphs 9, 10, 11 and 12 of the complaint.

REPUBLIC AVIATION CORPORATION

By C. W. MILLER
Vice-President

Subscribed and sworn to before me this
12th day of April, 1943.

At Farmingdale, New York.

29

GEORGE MATZAT

George Matzat, Notary Public
Nassau County Clerk's No. 2163
Certificate Filed in Suffolk County
Commission Expires March 30, 1944

(Seal)

30

Commerce Stipulation**UNITED STATES OF AMERICA****BEFORE THE****NATIONAL LABOR RELATIONS BOARD—SECOND REGION****CASE No. II-C-4826****In the Matter of****REPUBLIC AVIATION CORPORATION,**

32

and**INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W.-
C.I.O.**

For the purpose of the above entitled proceeding the following facts are hereby stipulated and agreed and may be introduced and received in evidence by and in behalf of the National Labor Relations Board, or by and in behalf of any party hereto with the same force and effect as if properly qualified witnesses were called before the Board and gave under oath sufficient and competent evidence on each of the matters herein set out, wholly without prejudice to the right of the National Labor Relations Board or any party hereto to object to the materiality or relevancy of any such facts, and likewise without any prejudice or disadvantage to the right of the National Labor Relations Board to offer oral testimony or other evidence as to any matter pertaining to the interstate commerce issues or any other issue in this proceeding: 33

1. Republic Aviation Corporation, hereinafter called Respondent, is and has been at all times since February

34

Commerce Stipulation

17, 1931, a corporation organized under and existing by virtue of the laws of the State of Delaware.

2. Respondent's principal office is located at Wilmington, Delaware. Respondent maintains and operates plants in the States of Indiana and New York. Respondent's plant in the State of New York is located at township of Babylon, Long Island, County of Suffolk, hereinafter called the Long Island Plant, and is the only plant involved in this proceeding.

35

3. Respondent is engaged in the manufacture and sale of military aircraft.

4. The principal raw materials purchased by Respondent and used in the manufacturing operations at the said Long Island Plant are aluminum and steel.

5. During the 12-month period immediately preceding the date of this stipulation Respondent's purchases of such raw materials were in excess of \$100,000, of which approximately 50% were shipped to said Long Island Plant from places outside the State of New York. During the same period the value of finished products manufactured at said Long Island Plant was in excess of \$100,000, of which approximately 50% were shipped from said Long Island Plant to places outside the State of New York.

36

6. Respondent concedes that it is engaged in commerce within the meaning of the National Labor Relations Act and is subject to the jurisdiction of the National Labor Relations Board.

Dated: April 15, 1943.

REPUBLIC AVIATION CORPORATION

By GRANVILLE WHITTLESEY, JR.

MARTIN I. ROSE

Martin I. Rose, Attorney

NATIONAL LABOR RELATIONS BOARD

Transcript of Testimony

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

SECOND REGION
Case No. II-C-4826

In the Matter of:

REPUBLIC AVIATION CORPORATION,

and

38

INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-
CIO.

Room C, 250 West 57th Street,
New York, New York,
Thursday, April 15, 1943.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.

Before:

39

JOSEPH L. HEKTOEN,

Trial Examiner.

Appearances:

MARTIN ROSE, Esq., 120 Wall Street, New York, New York, appearing for the National Labor Relations Board.

DONOVAN, LEISURE, NEWTON & LUMBARD, ESQRS., 2 Wall Street, New York, New York by GEORGE S. LEISURE, Esq., J. EDWARD LUMBARD, JR., Esq., GRANVILLE WHITTESEY, JR., FREDERICK M. DAVENPORT, JR., and JOHN J. RYAN, Esq., Farmingdale, New York, appearing for the Respondent.

Transcript

BENJAMIN RUBENSTEIN, Esq., 55 West 42nd Street, New York, New York, appearing for International Union of United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO.

Mr. Rose: I will offer in evidence as Board's Exhibit No. 1 the following papers:

41 Fourth amended charge filed March 24, 1943 by the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO.

Complaint issued March 24, 1943.

• Notice of hearing issued March 24, 1943.

Copy of Fourth Amended charge annexed to the notice of hearing.

Affidavit as to service sworn to March 25, 1943 by Milton Pokorne.

• Post Office return receipts numbered F-63196, F-63197, F-63198, F-63199, F-63200.

42 • Notice of postponement dated April 1, 1943.

Affidavit as to service as to notice of postponement sworn to April 2, 1943 by Milton Pokorne.

Post Office return receipts numbered F-63—

Trial Examiner Hektoen: Well, Mr. Rose, there is no question but what everybody got it?

Mr. Rose: I don't think so.

Trial Examiner Hektoen: Well, let's skip that.

Mr. Rose: Answer filed by the Respondent and sworn to April 12, 1943.

Copy of the Rules and Regulations of the Board, Series 2 as amended.

Mr. Lombard: There is no objection to that.

William L. Wilson—For Board—Direct

43

Trial Examiner Hektoen: Very good. Board's Exhibit No. 1 is admitted.

(Thereupon the documents above referred to were marked as Board's Exhibit 1 and were received in evidence.)

Mr. Rubenstein: I should like at this time officially to ask for a copy of the answer of the Respondent.

Mr. Whittlesey: I have told Mr. Rubenstein that as soon as I get a copy I will give it to him.

Trial Examiner Hektoen: Very good.

Mr. Rose: This copy of the notice of amendment to the rules fell out of these exhibits. I am attaching it to Board's Exhibit No. 1.

We offer in evidence as Board's Exhibit No. 2 commerce stipulation entered into under date of April 15, 1943, between the Respondent and myself.

Mr. Lombard: No objection.

Trial Examiner Hektoen: There being no objection it may be admitted.

(Thereupon the document above referred to was marked as Board's Exhibit 2 and was received in evidence.)

45

WILLIAM L. WILSON, was called as a witness by and on behalf of the National Labor Relations Board and, being first duly sworn, was examined and testified as follows:

Trial Examiner Hektoen: What is your address?

The Witness: 118 Sequams Lane, Babylon, New York.

Direct examination by Mr. Rose:

Q. You are employed, Mr. Wilson, by the Republic Aviation Corporation? A. Yes.

46

William L. Wilson—For Board—Direct

Q. In what capacity, Mr. Wilson? A. I am director of industrial relations at the Farmingdale plant.

Q. And how long have you held that position? A. 11 months.

Q. You mentioned the Farmingdale plant. Is that the plant that is referred to as being in Babylon also? A. Yes.

Q. And as director of industrial relations what are your duties? A. My duties are to administer and supervise the operations of the industrial relations department including the divisions of employment, training, safety, medical, personnel relations, personnel service, job classification.

Q. You have some familiarity with the factory organization? A. Yes, sir.

Mr. Rose: Will you mark these two documents as Board's Exhibits 10-A and 10-B for identification?

(Thereupon the documents above referred to were marked as Board's Exhibits 10-A and 10-B for identification.)

48 *By Mr. Rose:*

Q. I show you Board's Exhibit 10-A for identification, Mr. Wilson, and ask you whether your signature appears at the bottom of that document? A. No.

Q. Whose signature is it? A. It is the signature of my secretary.

Q. Did you send that letter to the National Labor Relations Board? A. Yes.

Q. By that letter I refer to Board's Exhibit 10-A for identification, which is the letter dated February 12, 1943, and was the sketch marked 10-B for identification attached to the letter you sent to the Board? A. Yes, I believe so.

Q. That letter, 10-A for identification, was signed by your secretary at your direction; is that correct? A. Yes.

William L. Wilson—For Board—Direct

49

Mr. Rose: I will offer it in evidence, being the letter dated February 12, 1943, addressed to Mr. Larkin and the sketch attached to it as 10-B for identification.

Mr. Lombard: I don't think 10-A is needed, but if Mr. Rose wants it I have no objection to these exhibits. You don't need 10-A in the record, do you? He said he sent this.

Mr. Rose: Well, I have got the testimony in.

Trial Examiner Hektoen: If there is no objection it may be admitted.

50

(Thereupon the documents previously marked for identification as Board's Exhibits 10-A and 10-B were received in evidence.)

By Mr. Rose:

Q. Now directing your attention to the sketch marked Board's Exhibit 10-B in evidence, Mr. Wilson, that represents the factory organization as it was constituted as of February 12, 1943? A. Yes, except as I state in the letter it is not possibly accurate in every detail but it is just as I state, a rough representation of it.

Q. From the sketch itself it doesn't purport to be complete? A. That is true.

51

Q. But to the extent that it does represent the factory organization it represents the factory organization as of the months of January and February, 1943; is that correct? A. I couldn't say that, no. It is about what it was at the time it was delivered to Mr. Larkin, but whether that covered circumstances in January, I don't know.

Q. As far as you do know, would you say it covered the circumstances in January? A. I would have to inspect it.

Q. Well, take a look at it.

(Document handed to witness.)

52 *William L. Wilson—For Board—Direct*

A. I am ready to answer. I believe that the chart covers the factory organization in January as well as on the date that it was delivered, but there may be some details in which it is incorrect.

Q. Now, in the upper boxes starting with the name H. E. Lasker, factory manager and the two boxes under that, you have the names and under them the titles. They indicate the titles of the men whose names appear in the boxes. Is that right? A. That is true.

53 Q. And that applies to the other boxes wherever the names appear except that some boxes have no titles? Is that correct? A. That is true.

Q. You have the word "superintendents" on one line and then boxes flowing from it. That indicates names of the superintendents in those departments; is that right? A. Yes, sir.

Q. And under that you have a series of boxes headed with the words "Sectional supervisors."

Is that the title of those people in the boxes under the words "Sectional supervisors"? A. Yes, sir.

Q. You have three series of such boxes. I refer more specifically to three boxes flowing from the "superintendent" and the series of boxes on the left-hand side of the sketch; is that right? A. Yes, sir.

54 Q. As well as the three boxes on the right-hand side of the sketch? A. Yes.

Q. Now, I notice some of the boxes in addition to a name have a number at the top. What does the number represent? A. The number represents the accounting code number by which we identify the particular factory division, shop, as we call them.

Q. Is the shop represented by each number commonly known by the number? A. Yes.

Q. In other words, where the number 80 appears the department is referred to as shop 80? A. Shop 80 or by the name that is given to it, the tool shop.

William L. Wilson—For Board—Direct

55

Mr. Rose: May we go off the record a moment?
I might be able to save a lot of time.

Trial Examiner Hektoen: Off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

Mr. Rose: In an off-the-record discussion with counsel, it was agreed that the department numbers appearing on Board's Exhibit 10 in evidence be explained by simply my reading a list indicating the name of the department and the number. The list is as follows:

56

Material preparation is No. 01. Primary assembly, 10. Processing, 15. Machine shop, 20. Steel detail, 30. Engine cowl, 35. Sub-assembly, 40. Fuselage, 50. Wing, 60. Final assembly, 70. Hangar and flight test, 75. Tool shop, 80. Loft and reproduction, 85. Experimental, 90. Is that agreeable, Mr. Lombard?

Mr. Lombard: Yes.

By Mr. Rose:

Q. In looking at this sketch, Mr. Wilson, the sketch being Board's Exhibit No. 10-B, I notice that department No. 10 has two sectional supervisors, "J. Doglione and J. Boroski." Is that correct? A. It was at that time.

57

Q. And is that the title of these men whose names appear in these boxes that have the number "Sectional supervisor"? A. Yes.

Q. And briefly what are the duties of the superintendents? A. They supervise the operations of the plants which report to them.

Q. And what are the duties of the sectional supervisors?

A. They supervise the various shops to which they are assigned.

58

William L. Wilson—For Board—Direct

Q. Now, is there an employee of supervisory rating immediately under the sectional supervisor? A. Yes, sir.

Q. And is the title "supervisor"? A. Yes.

Q. Just the word "supervisor"? A. Yes, sir.

Q. And is there an employee of supervisory rating immediately under the title of "supervisor"? A. Yes, sir:

Q. And what is that? A. Foreman.

Q. And is there an employee of supervisory rating immediately under the foreman? A. Yes.

Q. What is that title? A. Group foreman or lead man.

59

Q. Employees with the titles we have described constituted the supervisory organization in the plant? A. Not entirely.

Q. I am talking about supervisory rated employees below the rank of superintendent in production departments. A. In my opinion, yes.

Trial Examiner Hektoen: Does that start then with "Sectional supervisor", is that at the top of the pyramid?

The Witness: No, it goes on up for "manager", "general manager."

60

Trial Examiner Hektoen: Well, I mean, he said, "under superintendent."

The Witness: Under superintendent?

Trial Examiner Hektoen: Is that right?

The Witness: That is right.

By Mr. Rose:

Q. Well, for clarity, it runs then "sectional supervisor" and he has under him the supervisor; is that right? A. Yes, sir.

Q. And immediately under the supervisor is the foreman? A. Yes.

Q. And under the foreman is the lead man; is that right? A. Yes.

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Q. And they are responsible to one another as they go up? And the supervisor ranging from lead man up; is that right? A. Yes.

Q. What are the duties and the powers of the lead man?
A. I question whether I am qualified to answer that, Mr. Rose.

Q. Well, you know whether a lead man recommends hiring and firing? A. He does not recommend hiring except in the rarest instance.

Q. He does recommend firing? A. I believe so.

Mr. Lumbard: I think you ought to ask the witness whether he knows these things, Mr. Rose. He has indicated some question in his own mind.

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Trial Examiner Hektoen: Well, that is your best knowledge; is it, Mr. Wilson?

The Witness: Yes, sir.

Mr. Rose: May we go off the record?

Trial Examiner Hektoen: Yes.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

Mr. Rose: To save time, Mr. Lumbard has agreed to stipulate that the lead man, foreman and supervisor, sectional supervisor, are all of supervisory status.

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Trial Examiner Hektoen: So stipulated.

By Mr. Rose:

Q. Now, I note, Mr. Wilson, on the bottom of the sketch, Board's Exhibit 10-B, the notation "Equivalent assistant in charge of night shift."

What does that notation mean? A. That refers to the fact that there is a staff supervising the night shift which is the counter part of this up to the rank of superintendent.

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In other words, there is an assistant sectional supervisor who is the counter part of the day sectional supervisor. However, the night supervisors, foremen and group foremen or lead men do not carry the handle "assistant" as well, they are simply foremen on the night shift.

Q. In other words, you do have, say, from the rank of superintendent down, similar supervisory rated employees on the night shift? A. Yes.

Q. Such as you have already described? A. Yes.

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Q. Do the employees in the factory wear badges? A. Yes.

Q. Is there a color system for distinguishing supervisory employees insofar as the badge is concerned? A. Yes.

Q. What type of badge does the sectional supervisor wear? A. He wears a badge on which the predominant color is gold. It is gold all except the picture.

Mr. Rose: Perhaps we can save time and understand it clearly if you could make a rough sketch for us of the badges.

The Witness: I have my badge here if that will be of any help. That is the type of badge which a sectional supervisor wears.

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By Mr. Rose:

Q. You mean the badge has gold all around the picture? A. Yes.

Q. And what type of badge does the supervisor wear? A. The same.

Q. The same as the sectional supervisor? A. Yes.

Q. And how about the supervisory rated employees above the rank of supervisor or sectional supervisor, what type of badge do they wear? A. A gold badge.

Q. The same as the sectional supervisor? A. Yes.

Q. What type of badge does the foreman wear? A. He

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wears a badge of which half of the face is gold and the other half is the color designated in the shop in which he is employed.

Q. Which half is the gold? A. I think it varies. I don't think it makes any difference.

Q. Just half gold? A. Half gold.

Q. And what color badge does the lead man wear? A. The lead man or group foreman wears a badge which is framed in gold. We refer to it as quarter gold. It is not actually that. The picture is surrounded by a thin strip of gold and then the rest of the outlying portions of the badge are the color of the shop.

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Q. Did you say that was the same as the foreman's badge? A. No.

Q. The foreman's badge, as I understood you, was half gold? A. Yes.

Q. And the purpose of your color code is so that the employees can distinguish in the shop the supervisory rated employees? A. Yes.

Trial Examiner Hektoen: Did you say what kind of a badge the supervisor had, Mr. Wilson?

The Witness: A full gold badge.

Trial Examiner Hektoen: Like the sectional supervisor?

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The Witness: Yes.

By Mr. Rose:

Q. The badge of the ordinary employee doesn't have any gold on it; is that right? A. No.

Q. Is that right? A. Yes, that is right, excuse me.

Q. The employees are made familiar with this color system for identifying supervisory rated employees; is that correct? A. Yes.

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Q. Now, does the company employ any safety engineers, so far as you know? A. Yes.

Q. Could you tell me how many?

Mr. Lumbard: Well, is this material? I don't quite see it.

Mr. Rose: The reason I looked at you then was because there has been some question about numbers, and I didn't know whether that was something the company didn't want to disclose because of the military situation.

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Mr. Lumbard: I don't really know whether it is or not, but does it have anything to do with the issues here?

Mr. Rose: Yes, it relates to the issues.

Trial Examiner Hektoen: What is the question, Mr. Reporter?

(Question read.)

Trial Examiner Hektoen: Do you know how many, Mr. Wilson?

The Witness: Yes, three.

72 *By Mr. Rose:*

Q. What kind of badge does a safety engineer wear?

A. I am not sure.

Q. What is your best knowledge? A. I believe the head of the safety division wears a full gold badge. I know that. And the safety engineers wear half gold badges, I presume.

Q. Do you know what their duties are? A. Yes.

Q. Briefly, what are they? A. To investigate hazardous conditions and to take preventive or corrective actions to correct those conditions; investigate accidents, maintain safety records.

Q. Do you know Mr. Baker? A. Yes.

Q. Is he a safety engineer? A. Yes.

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Q. And is he the chief or one of the others? A. He is one of the others.

Q. Do they have any power to recommend the discharge of employees, as far as you know? A. Only in their own division.

Trial Examiner Hektoen: There are only three in the division; is that right?

The Witness: Well, I suppose they have a secretary.

By Mr. Rose:

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Q. Well, if they find a violation of the safety rules, what is their obligation to do? A. Their obligation is to report it to the responsible authority in the line of the factory organization and also elsewhere in the company where preventive action might be taken.

Q. Can they recommend any disciplinary action with respect to an employee violating the safety rules, as far as you know? A. As a practical matter, I think they might.

Q. Do you know whether they have done that? A. No.

Q. Now, Mr. Wilson, just where does your department fit into the factory organization? A. My department is not part of the factory organization.

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Q. What is the industrial relations department? A. The industrial relations department is in our organization a staff department that corresponds to the legal department or the accounting department or one of the other departments whose function it is to serve the factory or producing organization.

Q. And just what function does it serve? A. It employs all employees of the company except the top officials. It tests them, interviews them, trains them prior to their employment in an advisory capacity. It maintains the employment records. It inducts new employees into the organization through the training division. It trains employ-

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ees for upgrading in the training division. It maintains the personnel records of all employees except as to earnings and other payroll matters. It operates the medical division which treats all industrial or non-industrial cases which arise in the premises. It handles employee grievances, personal problems, or other matters which are brought to it by the committees. There is no assigned function to that except as an employee may wish to take his problem out of the line organization, that is away from his supervisor, I mean the general term "supervisor" and to the industrial relations department. It conducts the personnel service activities, such as handling gasoline rationing, transportation arrangements, selective service, the company group insurance, athletic activities of all kinds or social activities. It publishes the plant newspaper.

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I have explained the functions of the safety division, the responsibility for the safe working conditions in the plant in an advisory way. It operates the job classification division which evaluates and classifies all jobs in the factory on the basis of equal pay for equal work assignment.

It maintains this system. It approves rate changes under existing stabilization orders as to wages.

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That is about the picture.

Q. Do you have anything to do with the fixing of the labor policies in the plant? A. In an advisory way, yes, sir.

Q. Do you consult with other company officials concerning that matter? A. Yes.

Q. With what officials do you consult? A. I consult directly with my supervisor who is assistant to the president.

Q. What is his name? A. A. L. Kress.

Q. Anyone else? A. And with quite a number of executives in the company.

Q. Now, you referred to athletic activities and social

activities as coming under the jurisdiction of your department; is that correct? A. Yes, sir.

Q. And is there an activities supervisor employed? A. Yes, sir.

Q. Well, does he come under your jurisdiction? A. Yes:

Q. What does he do? A. He is generally charged with fostering or assisting employee groups to carry out activities which they wish to conduct. We have so many groups of employees who want to do so many things, we do not often inspire projects, but the employees as a group, the shop or plant or some other group, or a number of men who may have an interest in a given sport, will wish to participate in that sport under company aegis, and the activities supervisor is a counsellor in the personnel service division who assists them in whatever way he can. 80

Q. Well, how does he keep in contact with the employees interested in athletic or social activities? A. They come to him, his office.

Q. Where is his office? A. In the personnel division office.

Q. In the plant? A. In the office building.

Q. Do you also employ a man in charge of activities for the night shift? A. Yes, sir. 81

Q. What is his name? A. His name is Oskar Frowein.

Q. And his duties are as you have described? A. For the night shift, yes. He reports to the other man.

Q. Well, what is the other man's name? A. Edward Reisman.

Q. And what is his title? A. Reisman's.

Q. Yes. A. Activities supervisor.

Q. Is it the policy of the company to encourage worthwhile group activities of employees? A. Yes.

Q. And the policy is to assist if possible the employees in that activity; is that right? A. Yes, sir.

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Q. Now, does the company maintain bulletin boards in the plant? A. Yes.

Q. And about how many are there? A. Perhaps 40 or 50.

Q. And are notices approved before posting on the bulletin board? A. Yes.

Q. Do they bear any particular stamp? A. Yes.

Q. What kind of a stamp is that? A. I don't know that I could describe it. It is a round stamp, such a rubber stamp as you apply by using an ink pad.

83 Q. What does it say on it? A. I couldn't say.

Q. Do you approve notices for posting? A. My office does it.

Q. Well, who in your office does it? A. Perhaps my assistant or perhaps one of the girls.

Q. What type—strike that.

The bulletin board is the means you have for communicating information to employees? Is that correct? A. It is a means, yes.

Q. Are notices concerning social events and athletic events posted on those bulletin boards? A. Yes.

84 Mr. Rose: Will you mark this for identification, please?

(Thereupon the document above referred to was marked as Board's Exhibit 11 for identification.)

By Mr. Rose:

Q. I show you Board's Exhibit No. 11 for identification and ask you if you can tell us what it is. A. This is a customary weekly bulletin of employee activities which we post on the bulletin board.

Q. That type of notice is posted on the bulletin boards you have mentioned; is that correct? A. Yes.

Q. And that stamp on the upper right-hand corner

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"Approved. R. A. C. notice", is that the approval stamp for posting? A. Yes.

Q. And is that notice, marked Board's Exhibit 11, one of the notices posted on the bulletin boards? A. I feel sure it was. I don't personally recall seeing it, but obviously it is.

Q. It is pretty obvious that it was posted on the bulletin board? A. Yes, sir, or prepared for posting. I didn't look at the dates. In other words, whether it is past or future.

Q. It states: "About doings on April 6." A. I think it was, yes.

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Mr. Rose: I will offer Board's Exhibit No. 11 for identification in evidence.

Mr. Lumbard: There is no objection.

Trial Examiner Hektoen: Without reading it, it may be admitted. Tell me what the purpose is, Mr. Rose.

Mr. Lumbard: I was going to ask that.

Mr. Rose: The purpose, Mr. Trial Examiner, is that it relates to solicitation in the plant. I think this bears directly on the issue, if you will examine it.

Trial Examiner Hektoen: This is indicative of what goes on in the plant and all that sort of thing?

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Mr. Rose: Yes.

Trial Examiner Hektoen: All right.

Mr. Lumbard: I can't see what it has to do with solicitation. Did you say "solicitation"?

Mr. Rose: Yes, sir.

Trial Examiner Hektoen: Well, I suppose that is a matter for argument or something. I will admit it.

(Thereupon the document previously marked for identification as Board's Exhibit No. 11 was received in evidence.)

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By Mr. Rose:

Q. These notices of course correctly state the events, Mr. Wilson, is that right? A. I presume they do. They are signed by Mr. Reisman. He is in charge of them.

Q. Where is the inspection department? A. Physically there is no one location. Of course the inspection department inspects all activities in production that flow through the plant, and the inspector is all over the plant.

Q. And that is right in the plant? A. Yes, there is an inspection office which is in the office building and the chief supervisors of that department have their offices there.

Q. What are the shop offices? A. The shop offices are small glass and metal enclosed cubicles where the shop supervisors, that is the sectional supervisors, or perhaps inspection supervisors, have their offices.

Q. That is right in the factory as distinguished from the offices of the company? A. Yes, it is on the factory floor.

Q. The receiving and shipping departments are on the factory floor? A. No, they are in a separate building some distance away from the factory, so far as I know.

Q. Are they part of the factory as distinguished from the offices of the company? A. I would say they were distinguished from both.

Q. Now, are any tickets for social events sold in the factory? A. Yes.

Q. Are there any tickets for social events sold in the shop offices? A. Yes.

Q. Are any tickets for social events sold in the receiving and shipping departments? A. I don't know.

Q. Are tickets for social events, or rather are tickets for athletic events sold in the factory? A. Yes. By that I mean the factory offices.

Q. You mean those shop offices? A. Yes, those shop offices.

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Q. And who sells those tickets? A. I don't know.

Q. And tickets have been sold in the factory for social events or athletic events for some time, haven't they? A. Factory offices, yes, sir.

Q. You say "factory offices"? A. Well, I think that is the factory.

Q. Factory offices are the same as shop offices? A. That is right, yes.

Q. And the various groups of employees and departments have social affairs like dances from time to time; is that right? A. Yes.

Q. And they sell tickets for that? A. Yes.

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Q. And those tickets are sold also in the shop offices? A. Yes.

Q. And in other parts of the factory designated for that purpose?

Mr. Lumbard: Well, the witness hasn't said that.

Mr. Rose: I will withdraw the question.

By Mr. Rose:

Q. This was a 1943 notice referring to Board's Exhibit No. 11? A. Yes. We did not have that last year.

Q. When was the practice of posting the type of notice like Board's Exhibit No. 11 started? A. I don't recall.

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Q. Can you give us any approximation? A. Well, last summer or fall.

Q. Summer or fall of 1942? A. That is right.

Q. And since then it has been the practice to post that type of notice? A. Yes.

Q. Now, do you know what the duties of the plant protection officers are? A. Yes, to a degree.

Q. What are their duties? A. Their duties are to direct traffic, prevent trespass on the company premises, guard against sabotage, malicious damage or mischief,

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assist in the movement of employees about the plant at quitting time and the like, to enforce company rules usually by reporting infractions. They are members of the U. S. Army Auxiliary Military Police. They are under the directions and training by uniformed Army officers. They are sworn into the U. S. Army.

Q. Insofar as they act for management, they represent management? A. I couldn't answer that. I think it is a moot point.

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Trial Examiner Hektoen: You pay them, don't you?

The Witness: We pay them, yes.

By Mr. Rose:

Q. I was referring to a statement in the employees handbook of 1942 to the effect that plant protection officers represent the full authority of the company. Would you say that was correct?

Mr. Lombard: Is that a statement in the book?

Mr. Rose: Yes, at page 17.

Mr. Lombard: We haven't seen it yet.

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Trial Examiner Hektoen: Show it to Mr. Lombard.

Mr. Lombard: I suggest you show the witness what you have reference to.

Trial Examiner Hektoen: Let's take a five minute recess.

(Recess taken.)

By Mr. Rose:

Q. By the way, Mr. Wilson, have you ever heard of an organization called "Fuselage Benevolent Association"?

A. No.

Q. Have you ever heard of any benevolent association among employees in the plant? A. Yes, I have heard of some of them. They used to be quite a few of them around. Are these questions on the record?

Q. Yes. Do they come under your jurisdiction in any way? A. No.

Q. The system requested by the employees? A. No.

Q. Is there an organization called "Republic Service Organization"? A. Yes.

Q. What is that? A. That is an organization, I guess, that has no legal form but it is a means by which certain employees of the company have operated a recreational center for service men and have otherwise assisted service men, particularly those in the Farmingdale area.

Mr. Rose: You may examine.

Cross examination by Mr. Whittlesey:

Q. Mr. Wilson, I believe you referred on your direct examination to the personnel relations division. A. Yes.

Q. Could you tell us a little more, if you will, first just as to what that division consists of? A. In personnel it consists of a personnel relations manager, a personnel relations supervisor who is second in the line of authority, any number of counsellors.

Q. How many counsellors, do you know? A. Six, perhaps. And a records supervisor together with a substantial number, perhaps 15 typists and clerks and others who work on the maintenance of personnel records.

Q. Now, is that division under your direct supervision? A. Yes.

Q. Will you tell us what that division does? A. That division is charged with representing the company in the handling of any problems which arise in the work relationship of an employee to the company when the employee wishes to bring his problem to the attention of his employer.

Q. Can you give us an example of what sort of problems you mean when you say "problems"? A. Well, if a man was working on the night shift and for reasons of his home status or health or for another reason he felt he wished to be transferred to the day shift, he might ask the personnel relations division to arrange that for him if possible.

Q. How would a matter such as that come to the attention of the personnel relations division? A. In all likelihood the employee would first ask his lead man or foreman or perhaps his supervisor to authorize such a transfer.

101 If his immediate supervisor, whomever he might be, were to approve the request, obviously that would end right there, but if his supervisor did not approve it, the man might feel that he had not had a full hearing and complete consideration and therefore he might come to the personnel relations division and take the matter up with one of the counsellors; state his case for the further consideration that he thought he wanted.

Q. Is an employee required before coming to that division to get permission to do so, to talk to a counsellor? A. No. It is recommended, however.

102 Q. In other words, this employee is free to come as he chooses to talk with a counsellor; is that correct? A. Yes.

Q. Have you any idea of the number of cases daily on the average that that division handles? A. Well, there are a large number of cases that are of various slight importance that are worked out on the spot. A man may stop any member of our department on the factory floor and present his problem and it is entirely possible that that message can either be carried back to the personnel relations division or it can be taken up there on the floor. Those things run into the hundreds a week, I suppose, but the more formal matters, where the employee comes to the division, sits down and spreads his case, his problem, probably run 50 a day, 25 to 50 a day, something like that.

Q. Now, we have gotten to the point where an employee comes to the division and presents some problem to a counsellor. What is the action that a counsellor can or may take in any given case? Give us an illustration. A. Well, of course there is a wide variety of possible courses of action: The counsellor might simply explain to the employee that his request was one that could not be granted because of stated reasons, company rules, production requirements, whatever it might be, or he might feel that the request had merit, in which case he would either tell the employee how to go about getting the satisfaction on his own, or would undertake himself the negotiations to solve the problem for the employee. 104

Q. When you say "undertake the negotiations to solve the problem", what do you mean? A. Let's take our man who wanted to be transferred from the night shift to the day shift. A good counseling job would be done if first of all the counsellor were to determine the facts, in other words if the employee says he has a sick wife at home who must have his attention, it would be the counsellor's job to ascertain that that is the truth. If it is the truth, the counsellor would then go to the proper supervisor and make his recommendation regarding the action to be taken; that the facts have been investigated and they were thus and so, and attempt to convince the supervisor that he should approve the man's request. 105

If he fails in that level of authority, the counsellor may well take it to a higher level of authority until he feels he has either exhausted all remedies or has obtained the treatment of the case which he thinks is necessary.

Q. Mr. Wilson, I believe you were telling us on your direct examination about various different badges, badges worn by sectional supervisors; badges worn by supervisors, badges worn by foremen, badges worn by lead men; am I right? A. Yes.

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Q. I believe you described all of those badges and indicated that they all looked differently from each other. A. Yes, sir.

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Q. Can you tell us what the purpose of the different make-up and appearance of those badges is for? A. Well, there are several purposes, I think. In the first place, the badge indicates supervisory authority in certain cases, in many cases it allows that employee to know that the man who is issuing these instructions to him is a foreman. It may not be his foreman, but he is a foreman with that authority.

It is also a recognition of the individual's importance in the company. In other words, it is a decoration.

Q. To put it another way, is it meant to indicate what a man's functions are in the plant? A. Well, not always. You see other people who have no supervisory authority, such as doctors, engineers, technicians whose job is purely perhaps to design airplanes, they also have badges with various amounts of gold on. Now, they have no authority as such except over whatever they might be doing, but it is a recognition of their status in the company.

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Q. It is to show who the man is and what his position in the plant is; is that correct? Is that what a badge is for? A. In other words, test pilots, for example, has a full gold badge. It simply shows they are people of importance in the company rather than that they are any supervisor, which they are not.

Q. Would you say that it is to some extent to eliminate confusion as to who people are? A. Yes.

Q. Now, referring to this exhibit, Board's Exhibit 11, I refer you to one item here, the fourth item "Easter Dance and Floor Show."

"I notice it states there that tickets for that dance and floor show are available at inspection and shop offices, personnel service division or "See John Pierno, receiving." Is that correct? A. Yes, it says that.

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Q. I believe you testified that tickets to dances are sold in the plant? A. Yes.

Q. Could you tell me exactly how they are sold, Mr. Wilson? A. Yes. I think this paragraph that you have pointed out is a good illustration, because the company has a—

Mr. Rose: I am going to object to the form of this answer. It will be argumentative and not directly responsive.

Trial Examiner Hektoen: It wasn't completed. Go ahead.

The Witness: Would you repeat the question?

Trial Examiner Hektoen: How are they sold? I suppose what we want to find out is who takes the money and what goes on?

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By Mr. Whittlesey:

Q. I wish you would describe the exact mechanics in detail as to how dance tickets right now are sold in the plant?

A. Tickets are placed in various sections of the factory in these offices that I mentioned here, and any person who wishes to attend that function, desires to buy a ticket, might call there and arrange for the purchase of the ticket.

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Q. In other words, if a person wants to go to a dance, for example, he goes to an office and buys a ticket; is that correct? A. That is correct.

Q. And the same way that a person who wants to go to the theatre in New York City goes to the theatre and buys a ticket; is that right? A. That is correct.

Q. Or goes to a railroad station and buys a ticket to go to wherever he is going? A. That is correct.

Q. Are dance tickets—we will just stay with dance tickets for a moment—are those permitted by the company to be sold about the plant by people going around and handing tickets to people and asking them to buy? A. No.

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William L. Wilson—For Board—Cross

Q. Is that because of some rule or policy of the company? A. Yes.

Mr. Rose: Objection. I will withdraw the objection.

The Witness: Yes.

By Mr. Whittlesey:

Q. Do you know of any kind of tickets that are permitted to be sold by solicitation in the plant? A. No.

113 Q. Is solicitation for the purchase of tickets or the purchase of anything permitted in the plant? A. No.

Mr. Rose: Objection as calling for a conclusion. It calls for the witness' interpretation of "solicitation."

Trial Examiner Hektoen: Well, tell us what you mean by "solicitation"?

Counsel might expand that.

By Mr. Whittlesey:

114 Q. Are employees permitted with the knowledge of the management to ask for contributions or to ask persons to buy tickets in the plant? A. No.

Q. Or to ask for contributions to ticket funds? A. No.

Q. In the plant? A. No.

Q. Are any outside organizations permitted to ask for contributions or subscriptions from employees in the factory or offices of the plant? A. You mean ask individuals?

Q. That is right, to ask individual employees? A. No.

Q. Does that matter of requesting employees in the factory or offices to purchase tickets or contribute moneys, does that extend to requesting employees in the plant to join organizations? A. Yes.

Q. Has the company a rule making reference to solicitation in the plant or offices? A. Yes.

Q. Did the company have such a rule during January of 1943? A. Yes.

Q. In what form was that rule? Was it a published rule, Mr. Wilson? A. Yes.

Q. Printed? A. Yes.

Q. How was it printed? A. It was printed in the employees handbook.

Q. I show you this book and ask you if that is the handbook which you were referring to? A. Yes.

Q. I call your attention to page 17 of that book and ask you if there is any rule set forth referring to solicitation? A. Yes. 116

Mr. Whittlesey: I would like to offer this book in evidence as Respondent's Exhibit No. 1.

Mr. Rose: No objection.

Trial Examiner Hektoen: It may be admitted.

(Thereupon the document above referred to was marked as Respondent's Exhibit 1 and was received in evidence.)

Trial Examiner Hektoen: May I ask a question about that book? Are copies of it given to every employee?

The Witness: Yes. 117

Trial Examiner Hektoen: And it was in effect the rule stated in January and is now in effect?

The Witness: Yes.

By Mr. Whittlesey:

Q. I will ask you, Mr. Wilson, to read that rule to which you just referred.

Trial Examiner Hektoen: Well, I don't think that is necessary inasmuch as it is in evidence. It is rule 17.

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Mr. Whittlesey: It has no number, that is the trouble, and there are a great many rules on that page.

Trial Examiner Hektoen: It is a rule concerning that on page 17?

The Witness: Yes.

Trial Examiner Hektoen: Very good. That will be sufficient.

By Mr. Whittlesey:

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Q. How long prior to January 1943 had that rule been in effect or been in published form, I will ask you first. A. Since at least March of 1941.

Q. And did you have any connection or responsibility in respect to the preparation and publication of that rule? A. Yes.

Q. Did you have to do with the preparation of this employees handbook? A. Yes.

Q. And you prepared that rule relating to soliciting? A. So far as I remember.

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Mr. Whittlesey: I think it would be helpful, Your Honor, to find out just what the rule is. It makes it a little more helpful to me in examining the witness, that is all.

Trial Examiner Hektoen: Read it, Mr. Witness.

The Witness: "Soliciting. Soliciting of any type cannot be permitted in the factory or offices".

Mr. Rose: May I have that read?

(Witness' statement read.)

Mr. Rose: May we go off the record?

(Discussion off the record.)

Trial Examiner Hektoen: On the record. Are there any more questions?

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Mr. Whittlesey: Oh, yes.

Trial Examiner Hektoen: Very well, go ahead.

By Mr. Whittlesey:

Q. Now, prior to the time that the rule was put in published form, have you any knowledge as to whether there was a company policy of the same sort as that rule which you have just read? A. Yes.

Q. Was there any particular reason for putting that policy in the form of a published rule, Mr. Wilson, that you can recall? A. Yes.

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Q. What was the reason? A. The date that I fix as my recollection of the date of the first publication of the handbook, and also the first one that we have in our files, was March 1941. Prior to that time the company had been a very small shop; there were few employees; most of them were veterans. The rules or policies of management were quite well known. There seemed to be a little need for formalizing the regulations of the company, but sometime prior to March of 1941 the company started to grow at a great rate and at that time I was directed to prepare a company hand book similar to that which most organizations of substantial size have, which would state the company regulations for the relationship between itself and its employees, and therefore I prepared the book and in the course of doing that incorporated the rule about soliciting.

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Q. In other words, this rule, with respect to soliciting started as a company rule even prior to the time when it was published in March of 1941; is that correct? A. Yes.

Q. I believe you testified that since the rule has taken published form, a copy of the company handbook containing the rules is given to each employee at the time he is employed; is that right? A. That is our policy.

Q. Well now, Mr. Wilson, during the time that this rule

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has been in effect, have there been requests from time to time from organizations outside the company for permission to solicit the employees of the company? A. Yes.

Q. Can you tell us some such organizations that made such requests to solicit the employees of the company?

A. Yes, there have been many of them. The Navy Relief Society was one. The Army Relief Society another. The U. S. O. wished to have a drive at the time of their fund raising effort a year or so ago. The Red Cross through its local agencies has wanted to solicit the employees for contribution to membership each year. The Camel Cigarette Company and Chesterfield Cigarette Company each came to us with a proposition that the employees could purchase cigarettes at a reduced rate and as a result of that for every carton which they bought at a reduced rate there would be so many of cigarettes given free to any organization in the Army that we would direct.

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The Connecticut General Life Insurance Company, which has our group insurance policy, wished to have their representatives work in the plant to increase participations in the group insurance.

Q. By "work in the plant" men go around and see your employees and solicit? A. That is right, and talk to them about it.

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Q. Membership in that insurance? A. Obviously, to sell policies, they were insurance men.

The March of Dimes, the program of the Infantile Paralysis Group wanted contributions. The British War Relief a year or so ago had some kind of a function in New York City and they wanted to sell tickets to the employees.

Q. Now, when you name each one of these, do you mean to indicate by that that these particular organizations requested permission to come into the plant and into the factory or offices and approach employees for contributions in one way or another? A. Yes, or the purchase of tickets or something of the sort.

Q. In other words, they asked to directly and personally solicit your employees; is that correct? A. Yes.

Q. Were they permitted to engage in that particular type of activity? A. No.

Q. Was the company rule pointed out to such organizations, as you recall it? A. Yes.

Q. Well now, outside of efforts to solicit, made by organizations outside the plant, has the company at any time had any experience with efforts or requests made by groups of employees within the plant to solicit the fellow employees in the factory or in the offices? A. Yes.

Q. You are familiar with such efforts? A. Some of them.

Q. Can you give us an illustration of what you mean by "such efforts" that you are familiar with? A. Well, there are many of them. I suppose scarcely a day goes by that there isn't something that occurs in the plant which would be an approach to the violation of the rule. These benevolent associations, for one thing. There is one in a section of the tool shop. They had one for a while and it came to our attention and we asked them to cease activities. There was another one in 30 shop.

Q. Do you mean, did they cease activities after it was brought to your attention? A. Yes. There was another in 35 shop.

Mr. Rose: You mentioned 30 shop.

The Witness: 30, yes.

Mr. Rose: What is that?

The Witness: That is steel detail.

By Mr. Whittlesey:

Q. Go on, Mr. Wilson. A. There was some section of 10 shop, nights, that had a little treasury. Perhaps the employees would make the point or attempt to make the

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point that this was not solicitation in that no one had belonged and there was no pressure and that sort of thing. It was voluntary, free, offering. But we felt that obviously somebody was promoting it and we felt it was solicitation.

Q. Well, did it involve employees requesting other employees for financial contributions? A. We assumed it did.

Q. You understood that it did, is that right? A. Yes.

Q. They were requested to discontinue that? A. Yes.

Q. Did they do so? A. Yes.

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Q. Well now, I wish you would tell us a little bit more about such employee activities of solicitation that you are acquainted with. A. Well, I repeat. In a large organization like that a lot of new people coming in, a lot of people try to sell things. A man's wife is going to have a card party. He might bring some tickets in and try to sell them. Tickets to his lodge dance. A man may be going to go into Service and the boys may get together and start to take up a collection for his benefit.

Q. When you say "may be" or "may" do you mean that that has happened or may happen? A. That has happened, yes.

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Q. And have such efforts to collect money been brought to the attention of the management one way or another from time to time? A. Yes.

Q. And as far as you know, what has happened when they have been brought to the attention of management? A. We have instructed the supervisor or the person who has direct supervisory authority of the group or the individual, or whatever it was, to see that it stopped.

Q. And has it been stopped? A. Yes.

Q. Now, would I be right in understanding, Mr. Wilson, that sometimes employees come to you or come to their more immediate supervisors and request permission to sell tickets or to get other employees interested to join this

or that organization? A. Yes. Frequently these groups, dance committees or athletic teams or others who are intensely interested in some particular affair, will have a hard time understanding that they may not sell tickets. They say they will just carry them around and if anybody asks them for one they will have it there for him, or an individual or two or three individuals in ignorance of the rule may simply request permission to do certain selling or soliciting.

Q. And when such requests have been made, what has the management done? A. We have to advise them that it is contrary to the rule and they may not do it.

Q. You do so advise them? A. Yes.

Q. And thereafter have you know of any instance where any employees have been advised that the selling of such tickets is contrary to the rule; that they have continued to do so? A. I know of none.

Q. Do you know of any case where an employee having been advised that his activities were contrary to the company's rule against solicitation has continued to do so? A. Yes.

Q. Can you tell us the incident? A. The only incident of that nature which I know is that affecting Sam Stone.

Q. Outside of that, you know of no case where an employee who has been requested not to continue soliciting has persisted in doing so; is that right? A. I know of none.

Q. Does the company have any particular policy or reason for having a rule against solicitation in its factory or plant? A. Oh, yes.

Q. Well, can you tell us what the reason for that rule is, as you understand it? A. There seems to be several. In the first place, in a plant such as ours, with a large pay roll and a large number of employees gathering together, it would look to be a very fertile field for any fund-raising effort. I mean, every well-meaning charitable organization

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would come to us. They are a worthy cause and they realize that if they might solicit the employees they could speedily raise thousands of dollars.

That in itself if we permitted or condoned the solicitations would bring down upon the employee a whole series of them, because we all know there are any number of worthy charitable efforts going on all the time. It is almost impossible to choose between them as to worthiness. If you permit one, it is hard to tell another group of equally reputable citizens that they may not?

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In the second place, the employees themselves of course with thousands of employees there and a lot of money in pay envelopes on pay night and so on, there are all sorts of means and all kinds of personal problems arising. If there were not some break to discourage informal collections for the benefit of this man or that man or this cause or that cause, there would be an exceedingly large number of such collections; even in the face of the rule, they do occur.

Q. You say there would be. Has anything happened or is by reason of actual occurrences in the plant that makes you say that there would be if there were not a rule?

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A. There would be, because I repeat I know that they have occurred in the past and they have been reported and we have stopped them midway, but it is traditional among working men to pass the hat around for one cause or another.

Now, in a plant such as ours, a man is there, he has work to do, he is assigned to a certain location. If you put him on the spot so that anyone can come up and ask him to chip in for this or that, he has a hard time refusing. He doesn't want to be a cheap skate. He wants to be one of the boys. He is going to have to live with the people involved indefinitely. If you make him vulnerable to repeated requests it is not only going to cost him a lot of money but it is going to be highly unpleasant because if he

gets up on his high horse, as most employees would after a while, he is going to become quite angry and there is going to be disharmony in the group.

Additionally, we feel sure that fraudulent collections have been taken up and sometimes they are of a very questionable nature. If we permitted this thing it would be the easiest thing in the world to invent all sorts of need which would not be a valid excuse for a collection, and yet perhaps hundreds of dollars would be raised with some sob story that just had no basis in fact.

In the third place, from the company's point of view, solicitation as such necessarily interferes with the work at hand. It is almost certain to invade working hours when there is work to be done and it is certainly going to create disharmony which will impede the work of the group. 140

And there is in most rule books a rule such as that, and in drawing up that book I consulted any number of company handbooks to draw together the rules which seemed to fit our situation and to confirm these policies of ours which I said already existed, and from that and subsequent knowledge of company handbooks it is a fairly common rule in all sorts of manufacturing industries. 141

Q. I take it you don't mean to indicate at any time, Mr. Wilson, that there has been no solicitations occurring in the plant or offices? A. No, I can't indicate that.

Q. You mean solicitations occurred from time to time; is that correct? A. Yes.

Q. And when they had been brought to the attention of the company, has the company taken action with respect thereto? A. Yes.

Q. To do what? A. That has been to stop the solicitation whatever it was.

Q. In other words, you would state that to the best of your knowledge whenever solicitations come to the atten-

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tion of the management, efforts have been made to stop them? Is that right? A. Yes. Management is a large body of people. I would say yes.

Q. Well, your plant is engaged in the production of military airplanes; is it not? A. Yes.

Q. Are they engaged 100 per cent in war production? A. Yes.

Mr. Whittlesey: That is all I wish to ask.

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Redirect examination by Mr. Rose:

Q. Mr. Wilson, you mentioned about nine organizations that requested the privilege of soliciting employees. Just what did these organizations want to do? A. They wanted, I would say, to have a committee of employees or something like that, or appoint collectors or sponsors in each office and shop and carry out the purposes of their drive. Of course the discussions merely got that far. We felt that they couldn't do it and we would tell them that in the early stages of the game.

Q. They wanted to raise funds for their organization? A. Yes. Usually it was in connection with a nation-wide or an area campaign and they would feel that the company should.

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Q. And the Camel cigarette company wanted to sell its cigarettes? A. Yes, they wanted to have the R. S. O. sponsor it, and they wanted to sell certificates, which would be redeemed for a carton of cigarettes, and when the certificate was redeemed they would send some cigarettes overseas. They were doing that in another company in the neighborhood, you see.

Q. In response to some questions by Mr. Whittlesey, you spoke about the sale of tickets in the plant. How long has that method been in existence? A. I don't know. As far back as I know.

Q. As long as you have been in the plant? A. Yes.

Q. How are the employees advised tickets are for sale?

A. By this bulletin board notice which you showed me. By the use of the plant newspaper which would write up the function and by posters.

Q. Posters in the plant? A. Posters in the plant, yes, sir.

Q. Was it also done by announcements over the public address system? A. Yes.

Q. You referred to notices. Are you referring to the type of notice like Board's Exhibit No. 11? A. Yes, specifically to that. 146

Q. Now, you also referred to six counsellors. Do they have anything to do with the employee activities, such as sports or social matters? A. No.

Q. They are distinct from the activities supervisors? A. Yes.

Q. Is the sale of tickets, so far as you know, for these functions encouraged by means of posters or notices or announcements over the public address system? A. Yes.

Q. This public address system is a plant-wide announcing system that reaches the employees in the factory; is that right? A. It covers the factory. It doesn't cover the entire plant. 147

Q. Well, so far as it does, its purpose is so that the employees can hear through it? A. Yes. Initially the purpose of it is a call system to summon people who are needed to the telephone, but it is used for all sorts of things, playing music and these announcements.

Q. Now, directing your attention to the booklet, Respondent's Exhibit No. 1, when was it issued? A. I don't know. I think it was the first or second week in January but I would have to check our printer's records to substantiate that.

Q. Is there any other booklet of the same kind as of

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about the same time? A. No, that was the only booklet of that kind at the time it was issued.

Q. When did you prepare that booklet? A. Well, perhaps I had better explain our practice. The booklet was prepared—

Q. I would rather that you answered my question. A. In March of 1941, prior to March of 1941, but it has been constantly revised since that time.

Q. Were you with the company in March of 1941? A. Yes, sir.

149 Q. I have another type of booklet which looks the same which was supplied by the company. Is that another one of the employee's handbooks? A. Yes.

Q. Directing your attention to page 17 under "Soliciting", the rule in the booklet I just showed you is different from the booklet shown to you by Mr. Whittlesey, Respondent's Exhibit No. 1; is that correct? A. Yes.

Q. When was the change made? A. The change was made late in January or early in February.

Q. And who prepared the change? A. I did.

Q. You yourself or with anyone else? A. I prepared the change. I mean I discussed it with other people.

150 Q. Whom did you discuss it with? A. Primarily with counsel.

Q. The company's attorney? A. Yes.

Q. So that the booklet I showed you is the one in force since the time you mentioned? A. This booklet has been in force—

Trial Examiner Hektoen: We better identify which one you are talking about.

Mr. Rose: Well, let the one I have produced be marked as a Board's Exhibit.

(Thereupon the booklet above referred to was marked as Board's Exhibit 12 for identification.)

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Mr. Rose: I will reframe the question.

By Mr. Rose:

Q. As I understand your testimony, the booklet now marked Board's Exhibit No. 12 for identification, being the one I showed you, was issued late in January or February?

A. I feel that it was in February.

Q. Of this year? A. Yes.

Q. Is that the one that is in use now? A. No, there has been an additional edition after that.

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Trial Examiner Hektoen: Is that dated February on the cover?

Mr. Rose: No, the date is January 1943.

Trial Examiner Hektoen: In other words, it seems to be identical to the one that is already in evidence.

Mr. Rose: Yes, except to the extent I pointed out through the testimony.

Mr. Rubenstein: I should like the record here to note that both exhibits, Exhibit 1 of the Respondent and Exhibit 12 of the Board are dated January 1943.

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By Mr. Rose:

Q. For the record, would you read the rule under "Soliciting" as stated in Board's Exhibit No. 12?

Trial Examiner Hektoen: Is it comparatively brief?

Mr. Rose: Very brief.

The Witness: "Soliciting. Soliciting of any type at any time for any purpose is not permitted upon the company's premises."

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*William L. Wilson—For Board—Redirect**By Mr. Rose:*

Q. As I understand you, the booklet marked Respondent's Exhibit 1, was handed to new employees; is that right?

A. Yes. Will you ask me that question again?

Mr. Rose: I will ask the reporter to read the question.

(Question read.)

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The Witness: Handed to new employees after its issuance and to any old employees who would request a copy.

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Q. Now, you referred to the activities supervisor. I think you have told us those functions. Just how do they go about carrying out their functions? Could you describe them for us? A. I am not in very close contact with their operations, but in general they act as executive secretary for any of these teams or committees, groups, that want to have athletic events or dances. If a group is going to have a dance the activities supervisor may come into New York and negotiate for the hall and an orchestra for them. If a team is going to be organized, the activities supervisor may arrange a schedule for them. He may arrange traveling expenses. He will represent a league, if it is a league operation. He will attend the meetings of the league with other representatives of the teams. He will prepare stories for the newspaper about the affair. He will supervise and attempt to control and govern the activities of the employees in order that they don't incur obligations that they can't meet and that they don't undertake something which is contrary to the general company policy.

Q. Is it their duty or one of their purposes to encourage the type of activity you have mentioned among employees?

A. In general, no. We take the attitude that there are so many people who want to do so many things there at the

plant; so much group spirit, that we feel we would be wrong in stimulating these affairs. There are enough of them that stimulate themselves, and we don't want to have to beg people to participate. In other words, we don't want to announce a team and then call for people to come out to participate and there may not be an adequate response to it.

Q. These activities men, once a social function has been initiated, try to see that it is successfully carried through?

A. Yes.

Q. And the same applies to a sport activity once started?

A. Yes.

Q. How do they make their contacts with the employees?

A. Usually through visits of interested employees to them at their desk or by group meetings.

Q. Where do they have their group meetings? A. Usually somewhere in the company offices.

Mr. Lombard: Mr. Examiner, I just wonder if this is really redirect. This is something that Mr. Rose has been into on his own direct once before and unless there is some particular purpose I wonder if he will continue with it further?

Trial Examiner Hektoen: You appear to be about through with this line of questioning, don't you, Mr. Rose?

Mr. Rose: I think so. I wanted to ask one or two more questions along these lines. Frankly I haven't touched it before.

By Mr. Rose:

Q. That is, with reference to activity cards. I just wanted to ask you what they were, if you know. A. No, I don't know what activity cards are.

Q. How is the matter of group insurance handled? A. It is a pretty broad question.

Q. Well, how were the employees made familiar with it?

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A. Through an explanation of it which is given to them at the time of their employment and through a pamphlet which is available in the employment office and is given to anyone who comes in to ask about it. Through occasional explanations or references to it in the company paper.

Q. Were any of the employees circularized at any time concerning the group insurance plan? A. Yes.

Q. When was that? A. Last summer. That is the latest.

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Q. How was that circularization carried out, so far as you know? A. As I recall it, the group plan had been in effect for a long while, and it was felt that a number of employees who may not have availed themselves of it in the first instance may now wish to do so.

The insurance company sent a team of men down to put on a campaign. We informed them they could not do that. It was individual choice so far as the employees were concerned. They didn't know what the men wanted to do about it. Therefore a letter was written explaining this group insurance, I would not say approving it, but nevertheless we spoke of it favorably, signed by the president; a form letter, you see.

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That letter was attached to these booklets that I have mentioned which fully explained the plan, and they were given out to all employees or all employees who did not have the insurance, I am not sure which. They were distributed by, I suppose supervisors and others.

Q. Supervisors distributed them to the employees in the factory, so far as you know? A. I am not sure who did it, they were distributed, handed to everybody. Perhaps a bundle was sent down and everybody in the shop was asked to take one or was made free to take one, I don't know which. There was an application either in the booklet or attached to the letter which of course anyone who wished to take the insurance could fill out and return.

Q. Has there been a Red Cross Drive at the plant during the past month or two? A. Yes.

Q. How was that carried on? A. The Red Cross made available to us envelopes which called for the donor to fill in his name, his shop address. They were placed in large boxes throughout the plant and there were ballot boxes in the neighboring County that were placed about the plant, locked, posters were stuck up on them and then it was made known to the employees through a bulletin board notice and the plant newspaper that they, anyone, who wished to give to the Red Cross through the company could do so by picking up one of these envelopes, putting in his money, and dropping it in the box.

Periodically then the boxes were unlocked, the money of course reaching the Red Cross, and the list was compiled of those who had given and those people were supplied with the little Red Cross membership tag symbolic that they had given.

Q. Where were these envelopes placed? A. On benches, or in offices rather widely distributed on the premises.

Q. Has there also been any speaker concerning the Red Cross in the plant? A. Yes, we had two speakers, two war heroes, Marines, who had come back from Guadalcanal in the South Pacific, who came to the plant and told of their experiences in the war theatre.

Q. They urged Red Cross contributions? A. Yes.

Q. When was that? A. It must have been March. That is when the campaign started.

Q. March of this year? A. Yes.

Q. And did they address the employees? A. Yes.

Q. The employees as a group? A. It was done at lunch time, and there was an amplifier set up and the speaker would talk to whoever cared to listen. It was done in several sections of the factory on that basis.

Q. These people who spoke were not connected with the company; is that right? A. No.

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William L. Wilson—For Board—Redirect

Q. Has there been any U. S. O. drive? A. No.

Q. Have you had a War Bond drive? A. Yes.

Q. How was that conducted? A. Very similar to the group insurance. Applications are available in the factory and we constantly write about the importance of War Bond saving in the plant newspaper.

And we have charts or score boards up showing the degree of participation. Anyone who cares to purchase War Bonds can fill out an application and turn it in.

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Q. Where are the applications kept? A. In the shop clerk's or office heads.

Q. Where do these score boards appear? A. In various sections of the plant and offices, in the cafeteria.

Q. Was the score on a departmental basis? A. Just the overall plant basis.

Q. Did posters concerning the purchase of bonds appear in the plant? A. I suppose so. I don't specifically remember them. It is very likely.

Q. What is your best recollection? A. I don't remember any.

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Q. Were any announcements made over the public address system concerning the purchase of bonds? A. I don't remember any.

Q. Sam Stone was discharged; is that right? A. Yes, sir.

Q. And that was after he was asked to stop soliciting, he failed to do so; is that right? A. Yes.

Q. That was the only case of its kind? A. The only one I know of.

Q. Was any other employee discharged for failing to stop soliciting? A. I have never known it to occur.

Mr. Rose: No further questions.

Mr. Rubenstein: I would like to ask a few questions.

Recross examination by Mr. Rubenstein:

Q. You stated that some organizations are permitted to function within the company's premises; is that right? A. I don't think I stated exactly that.

Q. Well, there are employee organizations that do function as employee groups on the premises of the company? A. Nothing of a permanent nature; the committees for a function, or something of that sort.

Q. And when a committee is organized, what does its procedure consist of? Does it go around speaking to members to join?

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Mr. Whittlesey: I think it would be helpful if you could be more specific as to what committee you are talking about.

By Mr. Rubenstein:

Q. Mr. Wilson stated that there are some, not permanent organizations, and committees. A. Well, I would say that most of these committees were a group of two or three or four people with mutual interest in a sport or in a dance.

Q. They go out and announce a dance? A. Not until they have cleared it with the activities supervisor.

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Q. They have got to go to the activities supervisor and get permission, is that right? A. Yes.

Q. And your company encourages the formation of various groups, is that right? A. We don't. I will say not. We have no athletic organization or anything like that, any permanent organization.

Q. Well, would you consider the American Legion an athletic organization? A. No.

Q. Yet you not only sponsor it but you give it publicity in your booklets? A. Yes, that is true.

Q. And the American Legion Post has members among your employees, solicits members among your employees? A. I don't believe so.

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Q. Well, is it a memberless organization? A. No.

Q. How does it carry on its activities, do you know? A. Roughly, yes. When it was organized, notices were put up that anyone who wished to become a member of the American Legion Post should get in touch with the then personnel director. A number of people did so and that formed the organization.

Since that time they have had no membership drive or anything like that, but there is a statement about it in the company handbook.

173 Q. Do you know whether they hold meetings? A. Yes.

Q. Some of them do have members? A. Oh, yes, they have members.

Q. Do they have application cards? A. I don't know. They wanted to once and we told them they couldn't.

Q. And you also have this Republic Service Organization? A. Yes.

Q. That is a membership organization? A. That is hard to say. There are no rights or privileges or meetings of members, that is, contributors. It has no officers.

Q. This Board's Exhibit No. 12 and Respondent's Exhibit No. 1, Board's 12 for identification, both of which are dated January 1943, do you know which of those booklets were published first? A. Yes.

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Q. Which one? A. The first one. I guess it is No. 11, this one (indicating).

Q. That is Respondent's Exhibit No. 1? A. Yes, that was published first.

Q. And Board's Exhibit No. 12 was published later? A. Later.

Q. And if an old employee did not ask for a booklet it is conceivable that he did not get one; is that right? A. Yes.

Q. So that it is possible that some employees got Respondent's Exhibit 1 and did not get Board's Exhibit 12? A. Yes.

Q. And it is also possible that some employees who had been working before the first publication was issued did not get it at all? A. It is not likely to have happened. We distributed them to all, all employees, at the time it was first published, the time of the first publication, of course.

Q. How did you distribute them? A. I don't recall. We handed them out through the supervisors.

Q. Now, you stated—

Trial Examiner Hektoen: Excuse me at this point if I may interrupt a minute. Is that Respondent's Exhibit No. 1 which is the first one of these two that we are talking about; is that the first published book of this kind?

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The Witness: Well, it has been continually revised since March of 1941, but it is the same book. Many of the things are unchanged. The paging is unchanged.

Trial Examiner Hektoen: But then there are changes in it from time to time?

The Witness: Oh, yes, every two months or so.

Trial Examiner Hektoen: And all new employees get the current one, whereas old employees may go along with the one that they got when they came in; is that correct?

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The Witness: That is right. If there are any fundamental changes in any rule in the book or anything like that, a major change, that would be announced to all employees by the bulletin board to keep them current.

By Mr. Rubenstein:

Q. I would like to ask you here what prompted the company within the same month to publish two booklets or rules and change some of the rules?

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Mr. Whittlesey: I don't see that is material at all, Mr. Examiner. You are talking about a rule that is carried in February. I suppose Mr. Rubenstein has in mind the fact that one of the people here was discharged in January. I don't see that what was done in February has anything to do with what occurred in January.

Mr. Rubenstein: They are both dated January.

Trial Examiner Hektoen: I think inasmuch as this matter of solicitation seems to be the core of the case, as I read the pleadings, the thing is properly ventilated. I think I will permit the question.

(Question read.)

The Witness: The solicitation rule existed unchanged since the publication of the book in March of 1941 or earlier, but after Mr. Stone's discharge, which had obvious legal complications, we discussed the rule with our counsel to determine whether a rule would cover the situation. We were told that it did, but nevertheless in order that employees would fully understand it, we could make it a plainer rule, and on the basis of keeping the same sense, the same meaning, the same restrictions, but if we can clarify it it would be a good thing to do so in case this problem would come up again.

And so we rewrote the rule in the second form. The question of the dates I can explain. We had a substantial number of the covers printed. Paper is scarce these days and we did not want to simply discard them, and therefore we rebound the book in the existing covers which had been printed for the January issue.

By Mr. Rubenstein:

Q. Well, on questioning of counsel for the Respondent you testified that the duties of the counsellors are to take

up personnel problems of the employees; is that right? A. The personnel relations counsellors, yes.

Q. And among those personnel problems of the employees you listed changes of shift and so forth; is that right? A. Yes.

Q. Are there also problems affecting wage increases? A. Yes.

Q. So that if an employee wished either an improvement in his condition or wished a change of shift or a change of hours or an increase in wages, he went to the personnel man? A. Yes. There is hardly any limitation on him.

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Q. How does he get to the personnel man? A. He walks there.

Q. Just leaves his bench and walks over to the personnel man? A. Yes.

Q. And where are the personnel men? A. The personnel office is in the administration building which is adjacent to the factory building.

Q. How far is the administration building from the shop? A. It is at the nearest point about 100 feet perhaps. I might say that until March the 15th the personnel men were in the factory, but on March 15 because of pressure of space we moved them into this office building, and now it is about 100 feet away perhaps. It depends upon how you go and from what section of the shop.

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Q. So, according to your statement, any man, at any time during the day if he feels he wants to take up something with the personnel manager just gets up and walks away, disregarding whether the foreman is there or whether he has work to do or not?

Mr. Whittlesey: I believe he so testified.

The Witness: I would like to clarify that. We permit that, but we do not encourage it. We believe that the employee should also keep his supervisor

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William L. Wilson—For Board—Recross

informed of his whereabouts and if a man comes to the personnel counsellor and has not received a pass from the supervisor to come over, the personnel counsellor does not rebuff him and send him back but he tells him the next time he comes it would be much better all around if he would get permission to come first, but nevertheless the personnel counsellor as a practical matter would hear his problem rather than chase him back.

185 *By Mr. Rubenstein:*

Q. You mentioned something about a pass. A. If he does not bring a pass from his supervisor when he comes, the personnel counsellor gives him one when he goes back.

Q. So he does need a pass from the supervisor? A. A. No. As I say, he can come over without a pass. We believe that in case an employee wants to take up something that he feels he must hide from the supervisor.

Mr. Rubenstein: That is all.

Trial Examiner Hektoen: Anything else, gentlemen?

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Mr. Whittlesey: No questions.

Trial Examiner Hektoen: Just one question.

I don't know whether it is very material to our problem, but, as I understand the activities situation, a group of people, say six or eight, come and tell one of the activities people that they want to have a dance, is that right?

The Witness: Yes.

Trial Examiner Hektoen: Now, the activities man would normally put a break on that sort of thing a little?

The Witness: Yes.

Trial Examiner Hektoen: And yet if he is swayed by their eloquence then he gets behind it and sort of runs it for them? Is that right?

The Witness: I would rather say more likely to be swayed by the facts in the case rather than eloquence.

Trial Examiner Hektoen: And having been swayed by either the facts or their eloquence, then he proceeds to distribute tickets around through the shop and all that sort of thing?

The Witness: We try to keep the tickets out of the hands of this committee because they too ardently go out and sell tickets.

Trial Examiner Hektoen: And then he in that way also controls the financing of the thing?

The Witness: That is right.

Trial Examiner Hektoen: That is all I have.

Is there anything else?

Mr. Rose: In connection with what you ask, I want to ask a question too.

Redirect examination by Mr. Rose:

Q. Do you know a man by the name of John Pierno?

A. No.

Q. His name is mentioned on Board's Exhibit No. 11. Looking at the name in writing, would it refresh your recollection in any way? A. No, I don't happen to know him.

Mr. Rose: That is all.

Mr. Whittlesey: Could I ask a question or two?

Recross examination by Mr. Whittlesey:

Q. I want to be sure, Mr. Wilson, in answer to the Examiner's question about the distribution of these tickets by the activities supervisor that I am correct in understanding that he distributes those tickets to certain points in the plant? A. That is correct.

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Sam Stone—For Board—Direct

Q. Where employees can thereafter go to get them, is that correct? A. Yes.

Q. They are not distributed so that somebody will then take them to the particular employee? A. That is right.

Q. They are not distributed to be taken to employees, is that right? A. They are not.

Trial Examiner Hektoen: These points in which they are put are normally the shop offices?

The Witness: Yes.

191 Trial Examiner Hektoen: Anything else? Thank you very much.

(Witness excused.)

SAM STONE was called as a witness by and on behalf of the National Labor Relations Board and, being first duly sworn, was examined and testified as follows:

Trial Examiner Hektoen: What is your address?

The Witness: 5000 15th Avenue, Brooklyn.

192 *Direct examination by Mr. Rose:*

Q. Mr. Stone, you are employed by the Republic Aviation Corporation, the Respondent? A. Yes, sir.

Q. When were you hired by that company? A. I think towards the end of July, 1942.

Q. And in what department did you work when you were first hired? A. When I was first hired I worked in the wing shop, department 60.

Q. What rate of pay did you start with? A. 60 cents an hour.

Q. And until when did you work for the company? A. I worked for the company until January 20, 1943.

Q. And you were discharged on that day? A. I was fired on that day.

Q. What department did you work in at that time? A. At the time I was fired?

Q. Yes. A. I worked in the fuselage department, which is department 50, on days.

Q. And what was your rate at the time your employment ceased? A. At that time my rate was 75 cents.

Q. So that during the period of your employment you had received increases from 60 cents an hour up to 75 cents an hour; is that right? A. That is correct.

Q. During the period of your employment, did you sign an application for membership in the charging union? A. I did. 194

Q. I show you a card and direct your attention to the back of it and ask you whether that is your signature? A. That is right.

Q. Do you know when you signed the application card? A. It was in November, I think, the first week in November, 1942.

Q. Would the card help you fix the date? A. Yes, that is about it.

Q. Is that it? A. Yes.

Q. Is that the date? A. Yes.

Trial Examiner Hektoen: Well, what is the date? 195

The Witness: November 10, 1942.

Mr. Rose: I will offer the card in evidence.

Mr. Lumbard: No objection.

(Thereupon the card above referred to was marked as Board's Exhibit No. 14 and was received in evidence.)

By Mr. Rose:

Q. Were you a member of any committee of the charging union? A. Yes, I was a member of the organizing committee.

Q. When did you become a member of the organizing

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Sam Stone—For Board—Direct

committee? A. I became a member of the organizing committee when I joined the union.

Q. And what were your duties as a member of the organizing committee? A. To carry out union activity in the shop.

Q. Were you a voluntary organizer for the union? A. Yes.

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Q. What did you do as a voluntary organizer? A. As a voluntary organizer I carried on union activity in my department, which was signing up men during my lunch time, before starting time and at quitting time. That is, on my own time.

Q. Were you a shop steward? A. Yes.

Q. When did you become a shop steward? A. I became a shop steward on January 13, 1943 at a meeting which was held at the union headquarters.

Q. Were you elected shop steward? A. Yes.

Q. And for what department? A. I was a steward for the fuselage department, which is department 50, days.

Q. Were there any other stewards in department 50 aside from yourself? A. No, there weren't.

Q. You were the only one? A. Correct.

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Q. What were your duties as steward? A. Signing up people in my department and talking up union in my department.

Q. Did you distribute any union leaflets? A. Yes.

Q. Where? A. At a leaflet distribution. I would distribute leaflets outside of the gates and also at the train, on the platform of the train.

Q. You mean where the parties took the train to go home? A. That is right.

Q. Was that outside the plant? A. Right.

Q. When prior to your discharge had you distributed leaflets, do you recall? A. The last was I think the day before I was laid off, on the 12th we had a leaflet distribution.

Trial Examiner Hektoen: I don't follow that.

By Mr. Rose:

Q. Were you laid off? A. I was fired, rather.

Trial Examiner Hektoen: Were you fired on the 20th?

The Witness: I was fired on the 20th. Pardon me, I want to make a correction. There was a leaflet distribution around the time before I was laid off but the exact date on it I don't remember.

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Q. When you say laid off, are you referring to the occasion of your discharge? A. That is right.

Q. Did you ever see a button like this, Mr. Stone? A. Yes, I have.

Q. Did you ever wear one? A. Yes, I did.

Q. Was it identical with this button I am showing you now? A. Definitely.

Q. And did you wear such a button in the plant? A. I did.

Q. During working hours? A. Yes.

Q. When for the first time did you wear a button like this one? A. I wore a steward button on January 14, which was Thursday morning, for the first time.

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Mr. Rose: I will offer the button in evidence.

Mr. Lombard: No objection.

(Thereupon the button above referred to was marked as Board's Exhibit 15 and was received in evidence.)

By Mr. Rose:

Q. Where did you wear that button at work? A. I wore it on my shirt on the left side right near my regular identification badge.

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Sam Stone—For Board—Direct

Q. You mean next to your company identification badge?
A. Correct.

Q. Beginning with January 14 did you wear it every day in the plant up to the time of your discharge? A. Yes, I wore that button until the time I was fired.

Q. Do you know a man by the name of Otto Bofinger?
A. Yes, I do.

Q. What was his job when you worked in the plant in January? A. He was my supervisor.

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Q. Was he the supervisor in department 50? A. Correct.

Q. What kind of a button did he wear? A. A gold button.

Q. Gold identification button? A. That is right.

Q. Did he ever talk to you about a transfer to another shop? A. Yes, he did.

Q. When was that? A. That was on a Friday, the 15th of January, I think that is the date, the day after I wore the button.

Q. You wore the button on January 14, 1943? A. Yes.

Q. And this incident that you now refer to occurred the next day, January 15, 1943? A. That is right.

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Q. Will you tell us what happened and what was said and who said it? A. At around nine o'clock or somewhere around that time in the morning Mr. Bofinger told me to come over to his department and bring my tools where I was being transferred from my department. That I did. I took my tool box and I walked over to Mr. Bofinger's office.

Myself and a fellow by the name of Lester Jones was also called for a transfer, and I waited a little while and Mr. Bofinger officially spoke to the time keeper and told him to make out my transfer as of eight o'clock in the morning, and he walked on to department 10. The explanation given to me was that there was a shortage of men in department 10.

Q. Who said that? A. Mr. Bofinger.

Q. Did he tell you that is why you were transferred?

A. Correct.

Q. As I understand you, Mr. Bofinger went to department 10? A. Yes.

Q. Where did you go? A. Why, we walked on together to department 10 and we were told to wait outside.

Q. Wait a minute. You and Mr. Bofinger walked to department 10? A. Yes.

Q. Did anybody else go with you? A. Lester Jones went along, he is another worker.

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Q. And what happened when you got to department 10?

A. When I got to department 10 I was told to wait outside, and after a little while Mr. Bofinger came out with another supervisor, presumably, I think the supervisor of department 10.

Q. Do you know his name? A. I don't recall his name because I never had him as a supervisor.

Q. Would you recognize it if it was mentioned? A. I doubt it because he was never mentioned to me.

Q. Did you notice what kind of a button this man was wearing? A. Yes, he wore a gold button.

Q. Now, you went to department 10 with Mr. Bofinger and Mr. Jones, and when you got there you said you had to wait outside. Now, you have to wait outside of what? A. Outside the supervisor's office.

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Q. And who waited outside? A. I waited outside and Lester Jones did.

Q. What did Mr. Bofinger do? A. He walked into the supervisor's office.

Q. And then did he come out of the supervisor's office? A. Yes, he did after a while.

Q. Did he come out with this other supervisor? A. Yes.

Q. Then what happened? A. Well, when the supervisor

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Sam Stone—For Board—Direct

of shop 10 looked at me and saw my steward button he stated "Well, I don't want to have him in my department. I have enough of this going around here."

Q. What happened then? A. Mr. Bofinger and myself went back to my own department.

Q. What happened to Jones? A. Jones was accepted and put in.

Q. Was he wearing his steward button? A. No, he wasn't wearing any kind of a button.

Q. You mean any kind of a union button? A. That is right.

Q. On the way back, did Mr. Bofinger talk to you? A. Yes, he did.

Q. What did he say and what did you say to him? A. He said to me, "It seems that you fellows are not making any headway whatsoever here."

So I stated "to the contrary we are going to town and the union is here to stay and I feel that the company should take a different attitude towards this whole business instead of going about in an intimidation of the union members."

Q. Where were you put to work after you returned to department 50 with Mr. Bofinger? A. After I returned I was told to wait outside of his office and the transfer was cancelled and later on Mr. Bofinger introduced me to one of the foremen in the fin section of the fuselage.

Q. Was that where you were put to work? A. Correct.

Q. Is the fin section in department 50? A. Yes, it is.

Q. I am referring to this day you just told us about. On the day you just told us about, was the fin section in department 50? A. Right.

Q. Did Mr. Bofinger speak to you again that day? A. Yes, he did.

Q. Where? A. That was after lunch he spoke to me.

Q. Was that the same day or the next day? A. The same day.

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Q. Where did that conversation take place? A. Well, after lunch I was called in to Mr. Bofinger's office.

Q. Will you tell us what Mr. Bofinger said to you and what you said to Mr. Bofinger? A. I was called in to Mr. Bofinger's office, and another foreman walked into his office and in a little while Mr. Bofinger took out the company book, one of the blue books, and he referred to one of the statements in regard to solicitation in the plant and he asked me if I had ever seen the book.

I said that I had seen it. He asked me if I had read any of its contents. I said I had. He asked me if I had read that particular paragraph and I said I had.

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He said, "Do you know that you are no longer allowed to solicit in the plant?"

I said, "Yes, that is a company rule but it isn't a Government rule. As far as I understood, the National Labor Relations Act has given the right to the worker to belong to a union of his own choosing and he was allowed to solicit on his own time, not on company time (which I was doing) and I think you are infringing on that Act."

Then Mr. Bofinger said that he heard some reports that I wasn't getting along with some of the men and he wanted to know more about my character, that I bring in someone from the department that could vouch about my character.

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So I stated, I says, that it was a fine time after I had worked in the company for over six months that the company was now trying to find out about my character and if I could bring in someone from the department I felt it would be putting that person on the spot, and so he didn't say anything else after that.

Then Mr. Bofinger said, "Well, the men seem to be getting along very nicely in the department."

So I stated, "Well, there isn't enough harmony because a lot of things are going on which are not up to par with the men and they don't get along so well."

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Sam. Stone—For Board—Direct

I felt the only way that things could be brought up to harmony and increased production is if the union would come into the plant, you would have a labor-management and that would mean benefit not only for the company but it would benefit the war effort.

So he stated "Well, the production has gone up in the plant."

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I said, "I agree with the fact that production has gone up, but I fully agree with President Roosevelt's speech that he made that particular week in regard to production and also that the fact that the airplane industry was lagging behind."

I felt that production in Republic would be probably doubled or tripled if a labor-management committee would be put into the plant where the men would have their ideas put into effect, discuss means of cutting down hours and increasing production and that couldn't happen unless we had a union.

Q. Prior to that occasion had you ever been asked to produce witnesses concerning yourself? A. Never before.

Q. Did you solicit applications for the union after that talk with Mr. Bofinger? A. Yes, I did.

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Q. When did you do that? A. Before I left Mr. Bofinger's office I stated that I felt that I was not disobeying any law.

Trial Examiner Hektoen: I think you better answer the question.

(Question read.)

The Witness: Well, I continued doing that at the time I was in the plant.

By Mr. Rose:

Q. Did you ever solicit on company time? A. Never.

Q. When did you do your soliciting? A. Mostly at lunch time and before starting time and at quitting time.

Q. You said you never did it on company time? A. No, I didn't.

Q. Now, after the conversation you had with Mr. Bofinger, when you next solicited during lunch hour, did you notice anything different? A. Yes, I did. When I went out at lunch time I would speak to certain fellows about the union, I would have either Mr. Bofinger following me down or one of the lead men would watch me or a foreman would watch me.

Q. Can you name the lead man that watched you? A. Well, sometimes it is according to what section of the fuselage I was in. Sometimes Mr. Wesley Sergeant, who is a foreman up in the fuselage department, or Ray Orobona, would watch me, or if not one of the lead men a fellow by the name of John.

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Q. John Mekalainas? A. Something like that.

Q. What was the job of Ray Orobona that you referred to? A. Ray was my foreman in the fin section.

Q. Were these men when they watched you very near you? A. Yes, they could see me.

Q. And could they be seen? A. Yes, they could.

Q. How did it affect your success or failure in getting applications if at all? A. Well, certainly certain people wouldn't mind it, but in a lot of cases it would intimidate them and they would be scared to come near me.

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Mr. Lumbard: I move to strike out that part of his answer.

Trial Examiner Hektoen: Sustained.

Mr. Rose: Would you read the question, Mr. Reporter, please?

(Question read.)

Trial Examiner Hektoen: He tried to answer it before and then gave too many explanations. Did you get as many as you had before?

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Sam Stone—For Board—Direct

The Witness: I wouldn't know because a lot of them accepted the cards and probably sent them in through the mail.

By Mr. Rose:

Q. Did men talk to you while you solicited them as freely on the occasion you were watched as on the prior occasion when you were not watched? A. No, they didn't.

221 less. Q. On the occasion you were watched was there any reluctance to accept applications from you? A. More or

Mr. Lumbard: I think that calls for a conclusion about reluctance rather than what was actually said and done.

Mr. Rose: I will withdraw the question.

By Mr. Rose:

Q. Had you ever been watched before? A. No, I hadn't.

222 Q. What happened on January 20, the date of your discharge? A. On January 20, right after lunch, after I had spoken to some of the men in the department, as I was going along during the week the men would see my button and they were gaining more confidence. Mr. Bofinger had watched me that afternoon. He was with somebody else, I don't recall who it was. I think it was somebody in a supervisory capacity.

Then right after the whistle Mr. Bofinger came over with Ray Orobona, my foreman, and he said, "Well, you disobeyed the company rules, so you are being fired."

I stated that I didn't think I had disobeyed any rules and that the only reason why I was being discharged was because of union activity, and I felt that according to the National Labor Relations Act I had that right.

He said, "Pack your tools and come over to my office."

Q. Did you then check out? A. Yes, I did.

Q. Now, you say you were working in the wing shop?

A. Yes.

Q. Prior to the time you worked in the fuselage? A. Yes.

Q. During the time you worked in the wing shop did you see any solicitation? A. Yes.

Q. Did you know in that shop an employee named Joe Ritz? A. Yes.

Q. What was his job at that time? A. He was lead man from my group.

Q. Did you ever see him solicit? A. Yes, every payday, which was on a Thursday, he would come over and I would have to either give him a quarter or whatever the amount was. Sometimes it would vary. Sometimes it was ten, sometimes fifteen, sometimes a quarter, which went, I think, to the Benevolent Association of the Department. That was done during working time. 224

Q. Will you give us an approximate time when that occurred? A. What do you mean?

Q. When did you work in the wing shop as far as you can recall? A. I think it was around October. The exact date I couldn't state.

Q. You were first hired and went to work in the wing shop? A. Correct. 225

Q. Will you look at this document which is marked Board's Exhibit No. 6-A?

Trial Examiner Hektoen: Well, that is stating the fact, isn't it? Lead him to that extent.

Mr. Rose: The record indicates that this man was employed in the wing department from 7-29-42 until 10-10-42.

By Mr. Rose:

Q. Did that collection by Joe Ritz occur on every Thursday as far as you can recall in the shop? A. Yes, it did.

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Sam Stone—For Board—Direct

Q. And how did he do that solicitation? A. Well, he would come around with a sheet of paper more or less like a list and he would have names on it and after you had given him your money he put a check after your name and the amount of money you gave him.

Q. And what would he say to you on those occasions? A. Well, he would tell me the amount of money I had to give that week.

Q. And did he in the same way solicit other employees in the department? A. Yes.

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Q. You say that occurred during working hours? A. Definitely.

Q. Was there any solicitation of a similar nature in the fuselage department? A. Yes.

Q. When did that occur? A. Also right after pay.

Q. On Thursday? A. Right.

Q. Did that usually occur on the Thursdays you worked in the fuselage department? A. That is right.

Q. Who did that? A. A fellow by the name of Happy.

Q. Do you know his last name? A. No, I don't.

Trial Examiner Hektoen: What was his position?

The Witness: I think he was just an ordinary worker.

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By Mr. Rose:

Q. And what did he do? A. He also had a list and he would go around collecting for the Fuselage Benevolent Association.

Q. Did he solicit other employees in the same way? A. That is right.

Q. Do you know whether the lead man or any supervisor saw him do that? A. Definitely, because he was doing it in the open and anyone could see what he was doing because he had an open list.

Mr. Lombard: Just a minute.

Sam Stone—For Board—Direct

Trial Examiner Hektoen: First of all, who is the lead man to whom you have reference?

The Witness: In this particular case?

Trial Examiner Hektoen: Yes.

The Witness: Well, it can be any lead man who is around the department.

Mr. Lombard: I don't think the witness has answered the question, your Honor. I move to strike out the answer.

Trial Examiner Hektoen: Read the question, Mr. Reporter.

(Question read.)

Trial Examiner Hektoen: Well, strike the word "definitely" and the rest of the testimony as to what occurred I think may stand.

Mr. Lombard: Your Honor, the rest of it is conclusion as to what other people must have done.

Trial Examiner Hektoen: If that is your feeling, we will strike the whole answer.

By Mr. Rose:

Q. Do you recall any occasion when Happy solicited when a supervisor was around, either a supervisor, foreman or lead man or higher rated supervisor? A. The reason I stated that as emphatically as I did—

Mr. Lombard: Just a minute. I object to the answer.

Trial Examiner Hektoen: Just answer the question. Do you recall any occasion when that happened?

The Witness: When there was a supervisor around? At all times there was some one of the

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Sam Stone—For Board—Direct

supervisors around in the department because there were a lot of lead men from different jobs who were responsible to different people. So there was bound to be somebody in a supervisory capacity who would see it.

Mr. Lumbard: I think that is the same thing the witness said before, your Honor. He is arguing.

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Trial Examiner Hektoen: It seems to me that he stated that there are supervisory people around on these occasions, and that is about all anybody can say. Is that all right or do you want to have it stricken again?

Mr. Lumbard: I think we can stand for that for whatever it is worth.

By Mr. Rose:

Q. Would you describe just how Happy did this solicitation? You have told us that he had a list. Now what else did he do? A. He would go over to a person and he would ask him for the dime, or whatever the amount of money he collected was, and he would check off his name and that he would continue doing.

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Q. Did he continue doing that among other employees? A. Yes.

Q. Do you have any recollection as to the number of employees you saw Happy solicit? A. I couldn't say, any number.

Q. A large number?

Mr. Lumbard: I take it, counsel, by "solicit" you mean what? I think the question is objectionable from that standpoint unless you make it a little more definite.

Mr. Rose: I meant to cover what this man has described. Is there a question pending?

Trial Examiner Hektoen: How many people did you see Happy collect from the fuselage benevolent fund?

The Witness: Well, I couldn't say how many. I would see the immediate ones, maybe one or two that worked with me.

By Mr. Rose:

Q. How many names did he have on the list? A. That I couldn't say.

Q. Well, was it one sheet? A. It was a large sheet.

Q. How long was the sheet? A. A sheet like you have on your pad.

Trial Examiner Hektoen: The ordinary lawyer's yellow tablet?

Mr. Rose: Yes.

Trial Examiner Hektoen: We will take judicial notice. Was it filled with names?

The Witness: That I couldn't say because I never saw the list.

By Mr. Rose:

Q. Did you ever see any collections for the Republic Service Organization? A. Yes.

Q. Do you recall when? A. That happened I think sometime in October.

Q. What year? A. 1942. One of the lead men in the wing department collected from me a dollar during working time and I was given a card "Republic Service Organization", also a button for the contribution. That was done throughout the entire department.

Q. Who was the lead man? A. I couldn't say because he wasn't mine and any lead man just went around and

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collected money from all the people in the department because there was one for that organization.

Mr. Lombard: What did you say this man was?

The Witness: He was a lead man. Or anyone could have done that.

Mr. Lombard: Or anyone?

The Witness: Or any supervisor, I mean, like a foreman or a lead man, one of the two.

By Mr. Rose:

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Q. Was the man you are talking about now a lead man?

A. Correct.

Q. What kind of a button did he have? A. He had a gold, gold around his picture.

Q. A lead man's button? A. That is right.

Q. And did you get a Republic Service Organization button? A. Yes.

Q. Did you wear one in the plant? A. Yes, I did.

Q. Did anyone ever complain about your wearing that button? A. No, they didn't.

Q. Did you wear it visibly? A. Definitely.

Q. Where? A. I wore it right next to my badge.

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Q. Is this the type of button you are referring to? A. That is right.

Mr. Rose: I want the record to show the button, Mr. Examiner. I don't know whether I need offer it.

Trial Examiner Hektoen: What will we do, photograph it?

Mr. Rose: I will put it in evidence. I was going to make a statement.

Trial Examiner Hektoen: Why not simply say it is a button about so and so in diameter, white, with the letters, "RSO" in blue on it?

Mr. Rose: The Republic Service Organization button referred to by the witness is about the size of a nickel, is white and has on it in large letters "RSO" and under it 1942, indicating the year.

By Mr. Rose:

Q. Did other employees wear this RSO button? A. Yes, they did.

Q. In the plant? A. Yes.

Q. During working hours? A. Right.

Q. Now, during your period of employment and up to the time of your discharge, was there any other type of button of the charging union worn in the plant so far as you know, aside from the steward buttons? A. Would you repeat the question, please?

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Mr. Rose: Read the question, please.

(Question read.)

The Witness: No, I don't think there was any other button.

By Mr. Rose:

Q. So far as you know that steward button was the only type of union button worn in the plant? A. That is right.

Q. Do you recall any other type of solicitation in the plant or collection of any kind?

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Trial Examiner Hektoen: Excuse me, Mr. Rose. Do you have much more of this witness?

We will take a five minute recess.

(Recess taken.)

Trial Examiner Hektoen: Proceed.

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*Sam Stone—For Board—Cross**By Mr. Rose:*

Q. Will you answer the last question, Mr. Stone? A. Yes, there were other kinds of solicitation, such as for dances, basketball games, boxing matches. They would have posters hung up in the plant telling about the different events. Also they would be announced over the loud-speaker.

Q. By the public address system? A. That is right.

Q. What type of an announcement do you refer to? A. Well, for instance, if it was a boxing match or a dance, it would be announced.

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Q. Well, what would the announcement say? A. It would ask you to attend the dance or the boxing match.

Q. Do you recall who solicited you for any boxing match? A. I had no one approach me.

Q. No one approached you? A. No.

Q. How about for dance tickets. Did anyone approach you, do you recall? A. No one approached me for that.

Mr. Rose: You may examine.

Cross examination by Mr. Lumbard:

246

Q. You said you started work, Mr. Stone, in July 1942? A. That is right.

Q. And then you got three raises? A. That is right.

Q. Those were the regular raises after you had been there a period of four weeks; isn't that right? A. They were automatic raises.

Q. They were all automatic raises? A. That is right.

Q. And then in November you joined the union? A. That is right.

Q. And at about that time did you become one of their organizers? A. Yes.

Q. And you took cards around with you? A. That is right.

Q. This is in November; is it? A. That is right.

Q. And did you keep a supply of those cards in your pocket while you worked in the plant? A. Yes.

Q. And you continued and you passed these cards out while you were in the factory? A. Yes.

Q. And you did that from November right up until the time of your discharge? A. Correct.

Q. You referred to a time when you had a talk with Mr. Bofinger whom you said was a supervisor, and you described to us certain events that took place on one day when you were taken down to another department? A. Yes.

Q. Do you remember that? A. I do.

Q. Did you fix any date for that? I have forgotten whether you did. Could you place it as being so many days before you were finally discharged? A. This was on a Friday that I was called to Mr. Bofinger's office.

Q. On a Friday? Will you tell us again, please, just what happened on that day? I think you said that at nine o'clock in the morning somebody spoke to you. A. It was around that time. Whether it was at nine or a few minutes later or before I couldn't say. I know it was in the morning. Mr. Bofinger told the timekeeper to make out an official transfer as of eight o'clock in the morning.

Q. Who first spoke to you on that morning? Did Mr. Bofinger come over to speak to you himself? A. Was that in regard to the transfer?

Q. Yes. A. No, I think it was his assistant.

Q. And when he came over to you what did he tell you?

A. Mr. Bofinger wanted to see me in his office.

Q. Then what did you do? A. Well, I went to his office.

Q. With the assistant? A. I don't recall whether I went with the assistant or went by myself.

Q. Well, at any rate you went to his office? A. I went to his office.

250

Sam Stone—For Board—Cross

Q. Is that an enclosed office? A. Yes.

Q. It has a door that you open and go into? Is it a glass partition, something like that? A. That is right.

Q. And what happened when you got there? A. I waited outside.

Q. Outside of his office? A. That is right.

Q. Well, after a while you finally got into his office after you waited, or did Mr. Bofinger speak to you outside? I just wanted to find out where you went when you had your talk. A. Well, Mr. Bofinger took me to the shop, shop 10.

251 Q. Well, before he took you there, didn't you have some talk with him first? A. No, the only thing he stated was that I was being transferred to another department, that is all.

Q. Well, you waited outside of his office, and after a while he came out? A. That is right.

Q. And he said that you were to be transferred to another department? A. Right.

Q. And then you went with him to some other place? A. That is right.

Q. And that was department 10? A. Correct.

252 Q. Did you ask him why you were being transferred? A. I don't recall whether I did ask him. I recall that I was told there was a shortage of men in department 10 and I was being transferred to department 10.

Q. Was that what he said to you? A. Yes.

Q. You asked him why you were being transferred; is that it? A. I don't recall whether I asked him or not.

Q. Well, in any event, he told you that that was the reason? A. Yes.

Q. This was in conversation between you on your way to the other department? A. No, that was before I walked down to shop 10.

Q. While you were still outside his office? A. That is right.

Q. Have you told us all the talk you had with him outside of his office? A. I think that was about all.

Q. And did you have any talk with him on the way up to department 10? A. No, I didn't.

Q. What happened when you got to department 10? Going back a minute, there is another man with you all this time, isn't there? A. Yes.

Q. He waited outside along with you? A. Correct.

Q. And then you both went with Bofinger to the other department? A. That is right.

Q. What happened when you got there? A. We were told to wait outside of the supervisor's office at shop 10. 254

Q. Is there some label on the door to indicate what the office is? Do you remember? A. I think there is.

Q. Well, then, what happened after you were asked to wait? What did you do? A. I stood outside and waited.

Q. And the other man stood there with you? A. That is right.

Q. And Bofinger went inside? A. Correct.

Q. And closed the door? A. Yes.

Q. And then what happened after that? A. Well, Mr. Bofinger and the supervisor of that department came out.

Q. And just before you go ahead, they had been in there for a few minutes together? A. That is right. 255

Q. Talking to each other? A. That is right.

Q. You could see them through the glass? A. Correct.

Q. But you couldn't hear what they said, could you? A. That is right.

Q. And then they came out? A. Yes.

Q. And you and Jones were both there? A. That is right.

Q. And what happened next? A. Well, the supervisor looked at me and he saw my steward button and he said, "I don't want to have him in my department because I have enough of this going on here." That was all.

256

Sam Stone—For Board—Cross

Q. He didn't make any comment about your button, did he? A. No, he didn't say anything about the button but he looked at it and that is why he made that remark.

Q. Will you repeat that again, what he said, just exactly what this other supervisor said when he came out?

A. He said, "I don't want to have him in my department. I have enough of this going on right here."

Q. And this was right in front of Jones and Bofinger?

A. That is right.

Q. Is that all that was said in front of you at that time?

257

A. That is right.

Q. Anything said about Jones? A. No.

Q. Well, then, what happened after that? A. Well, Jones was accepted in shop 10 and I was taken back with Mr. Bofinger to the fuselage department.

Q. What do you mean when you say Jones was accepted? Do you mean he stayed there? A. That is right.

Q. Do you know what happened to him after that? A. I know he remained in shop 10.

Q. And then you went back to your old department?

A. That is right.

Q. Did Bofinger take you back? A. Right.

Q. Now, you had some talk with him on the way back?

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A. Well, he remarked to me that "It seems that you fellows are not making any headway whatsoever here." And when he said that I remarked "On the contrary, we are and the union is here to stay and the personnel should change its attitude towards the union because we have all the U. A. W. members behind us and this place is going to be organized."

Q. You were trying to persuade him that the union was a good thing? A. That is right.

Q. You were trying to persuade him to believe as you believed; is that what you were trying to do?

Mr. Rubenstein: I object to that as irrelevant.

Mr. Lumbard: All right, I will withdraw it.

By Mr. Lumbard:

Q. You were very glad to talk to him about the union, weren't you? A. Well, Mr. Bofinger opened up the conversation to that effect, so I spoke to him about it.

Q. Well, how far is it from where Bofinger's office was at that time to this other office to which you went? How much of a walk did you have? A. I don't know exactly but it doesn't get long to get there, a couple of minutes.

Q. Just a couple of minutes? A. That is right.

Q. And you were talking as you walked along? A. 260
Where was this?

Q. When you walked along with Bofinger. A. At what period?

Q. When you left the office of the No. 10 supervisor to go back to your old department, that is a two or three minute walk? A. Correct.

Q. And this talk you have just told us about occurred while you were taking that two or three minute walk? A. That is right.

Q. You were just having conversation as you walked along? A. That is right.

Q. What happened when you got back to your own department? A. I was told to wait at Bofinger's office for a while and he cancelled the transfer that was made out for me for shop 10. 261

Q. Well, where did you wait? A. I waited in front of his office.

Q. You mean outside of it? A. That is right.

Q. How long did you wait there? A. I don't think very long.

Q. Well, after you waited some time, what happened next? A. I was taken over to the fin section and I was introduced to Mr. Orobona who was to be my foreman on fins.

Sam Stone—For Board—Cross

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Q. Who took you there? A. Mr. Bofinger.

Q. And then you started to work in that department on fins? A. That is right.

Q. How long did all this take from the time you left?

A. Oh, I couldn't say.

Q. Well, it was a little after nine when you were first called to Mr. Bofinger's office? A. I wouldn't know.

Q. Well, I am not trying to pin you down, I am trying to get your best estimate of about how long all this took.

A. I couldn't say exactly how long it took.

263 Q. Well, you got back the same morning, didn't you?

A. That is right.

Q. And you still had the button on, of course? A. Definitely.

Q. How many days had you worn the button up to this time? A. That was the second day.

Q. And then I think you testified that after lunch you spoke with Bofinger again? A. After lunch Mr. Bofinger came over to my bench and he told me he wanted to see me in his office.

Q. Earlier that day or at some other time before this had you given out some cards? A. That is right.

264 Q. You had given out some cards that day, too? A. That is right.

Q. And after lunch Bofinger came over and this same day Bofinger came over and spoke to you? A. That is right.

Q. Will you tell us again, please, what he said? A. Mr. Bofinger wanted to see me in his office. That was after lunch.

Q. After you had been passing out these cards? A. That is right.

Q. And then you went to his office? A. That is right.

Q. And what happened when you got to his office? A. Well, when I got to his office some of the foremen from the department walked in and Mr. Bofinger took out the

company rule book and he asked me if I had seen that book before. I said I had and then he referred to the ruling in the book and asked me if I had read it. I said I had. Then I said I was doing this on my own time and that I had a right to solicit for the union because there was a Wagner Act and a National Labor Relations Act which gave the workers a right to belong to the union.

Q. He must have said something to you about your passing out cards? A. Well, yes, he said that I was not allowed to solicit in the plant.

Q. That is, that is what he started out by telling you; isn't it? A. That is right. 266

Q. He told you that you couldn't do that? A. That is right. I said that I had a perfect right because that was a company ruling, it wasn't a Government ruling, and according to the Government law, which is the National Labor Relations Act, I have that right. I had the right to solicit on my own time and I felt no one could take away that right from me.

Q. He told you it was a company rule that you couldn't do it? A. That is right.

Q. And you said that you knew that there was a company rule about soliciting? A. I said I knew of that particular rule and I felt that was only a company rule and it wasn't a Government rule, and I also stated that Mr. Bofinger wasn't aware of the National Labor Relations Act, that either the union could supply him a copy or else he could send away for a copy to the Government and make himself clear on the position on solicitation. 267

I felt that rule was only pertaining to the company itself.

Q. You said you weren't going to obey the rule; isn't that what you said? A. I felt I was going to do the right thing.

Q. In other words, you said you were not going to obey the company rule? A. That is right.

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Sam Stone—For Board—Cross

Q. And after that you went back to your department. That talk that you had with him lasted a little while, I suppose? A. That is right.

Q. And you then went back to where you had been working? A. Yes. He said he would check up on the law and that was all. I said I would continue working in the interest of the company and I would do my share for the war effort as before; but I would continue soliciting for the union which I had a perfect right to do.

269 Q. Did you continue soliciting that day? A. Not until after quitting time.

Q. But you did solicit that day? A. That is right.

Q. In the factory? A. Correct.

Q. And this was a Friday? A. Yes.

Q. Did you work on Saturday? A. Yes, I did.

Q. And did you solicit on Saturday also? A. Yes, sir; I did.

Q. And was it at that time that you first noticed that somebody was watching you as you have described? A. I noticed it right along.

Q. I thought you said you first noticed it after this talk with Bofinger. A. I don't recall saying that.

270 Q. Well, can you tell us when you did first notice it? A. I was watched all the time when I was giving out union cards to the men at lunch time because when I walked from one section to the other Bofinger would follow me. He wouldn't be right on-top of me but he would get a distance from where he could see what I was doing.

Q. Well, this was a day or two before he spoke to you on Friday which I think is the 15th? A. That happened when I first wore the button. That was on Thursday and Thursday lunch time I openly gave out application cards in the plant.

I did it in the morning too when I came in, and it was obvious because anyone could see me handing out the cards. I wore the steward button.

Q. They could have seen you hand out cards ever since November, I suppose? A. No, because I didn't—

Q. Didn't you say you were passing out cards starting with November? A. That is right, but I didn't do it in the open.

Q. Well, how did you do it? A. Well, I did it in my spare time, during lunch time. I would go over and speak to a worker indirectly and I would give him a card.

Q. What do you mean that you did it in the open? You did it at any time openly so that people would see you? A. No, I didn't do it at any time, I only did it at lunch time and before starting time and at quitting time.

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Q. You did it the same way you always had? A. No, the only time I gave out cards openly was when I first started wearing the steward button.

Q. Weren't you always trying to give out as many as you could? A. Yes.

Q. So that the only difference was that you put a button on? A. There is quite a bit of difference. The thing is that before I wouldn't work in the open and this time I would work openly. I wore a steward button and it was obvious I was working in the interest of the union.

Q. What did you do more openly after you put the button on than you had done before? A. Well, the men could see that I was a recognized steward in the department, so naturally it had a different effect.

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Q. Do you mean you got a better reception after you put the button on? A. That is right.

Q. You were able to give out more cards? A. Correct.

Q. And the men thought you were recognized by the company as a steward for the union, isn't that what they thought? A. No, I wouldn't say that.

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Sam Stone—For Board—Cross

Mr. Rubenstein: I object to that. How does he know what a man thought? It is a conclusion of the man's thought.

Trial Examiner Hektoen: Well, unless somebody came and told you what he thought, I don't see how you could answer it, Mr. Witness, nor do I see how he can, Mr. Lombard. So I will sustain the objection.

By Mr. Lombard:

275

Q. I think you have testified, Mr. Stone, that the day that you were released you had another talk with Bofinger?
A. Yes.

Q. And will you tell us again, please, how that came about? A. It was after lunch time and Mr. Bofinger came over with Ray Orobona and stated that I was being fired for soliciting in the plant. I stated I wasn't being fired for soliciting in the plant because I was being fired for union activity which I had a perfect right to carry on at my own time, and I wanted them to know that.

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Q. Well, didn't he tell you specifically that you had been passing out cards again since he talked to you several days before? A. That is right.

Q. And you admitted that you had? A. That is right.

Q. And he told you that that was the reason that you were being discharged, didn't he? A. That is right.

Q. Have you been employed since January 20? A. No.

By Mr. Lombard:

Q. You testified that I think it was around the 14th of January that you put a button on. Whenever it was, I don't care, but at about the time you put the button on you solicited in a different manner from what you had before?
A. That is right.

Q. Now, could you please tell us what you did differently at that time? A. I gave out cards in the open.

Q. Well, you had always done that, hadn't you? A. No, I hadn't.

Q. What do you mean when you say "gave out cards in the open"? A. Well, I would walk over to a person and I would have my cards in my hand, which I never did before.

Q. Before you had them in your pocket? A. That is right.

Q. With the ends sticking out? A. I never had them so you could see them.

Q. Well, had you tried to conceal them before? A. I kept them in my pocket.

Q. Well, had you tried to conceal what you were doing before that time? A. Well, I worked indirectly, where after that I would take out my card and I would show it.

Q. I will have to ask you to answer that question. Before that time were you trying to conceal what you were doing? A. Well, I didn't work openly before.

Q. Were you trying to conceal it before that time? A. I wasn't concealing it. I didn't conceal it to the men. The only thing I worked indirectly with them.

Trial Examiner Hektoen What does that mean? 279
You asked them to sign cards, didn't you?

The Witness: That is right.

Trial Examiner Hektoen: What do you mean by "indirectly"?

The Witness: Well, I would first find out about the person, if he was interested in the union.

Mr. Rubenstein: May I ask a question? Maybe that will clarify it.

Do you mean to say that before you put your button on you were more careful in approaching a man?

280

Sam Stone—For Board—Cross

The Witness: That is right.

Mr. Rubenstein: I think that is what he is trying to say.

Trial Examiner Hektoen: That is my impression, but Mr. Lumbard is trying to find out if he is trying to conceal his activities. I don't know where we are with reference to that.

Mr. Lumbard: I don't either.

By Mr. Lumbard:

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Q. Well, before this you kept your cards in your pocket and you were more careful about how you talked to the men? Is that what you are trying to say? A. That is right.

Q. And after that you just kept them in your hand and you talked to anybody at any place? Is that right? A. That is right.

Q. You referred to the fact that during one of the talks you had with Mr. Bofinger something was said about a character reference. A. That is right.

Q. And that was the earlier talk, wasn't it, the day that you went to the other department? A. That was on Friday afternoon.

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Q. And where was it that he said that to you? A. It was in his office.

Q. After you came back from department 10? A. No, that was in the office when I came back from department 10, that was in the morning.

Mr. Rubenstein: The same day in the afternoon?

The Witness: That is right.

By Mr. Lumbard:

Q. When you were called in and had the talk about the company rule? A. That is right.

Q. And would you tell us again, please, what the talk was about references? A. Mr. Bofinger showed me the company book and he showed me the rule and he asked me whether I had read the rule. I said that I had read it.

Trial Examiner Hektoen: I think the witness misunderstood you. He wants to find out what this man asked you about or told you about character references.

The Witness (Continuing): Mr. Bofinger asked me to bring him someone that could vouch for my character, so I stated that I had been with the company for quite some time and it was the first time that I had been asked to bring him a character witness.

By Mr. Lumbard:

Q. This was during the talk that he had with you about the company rule? A. That is right.

Q. In his office? A. Correct.

Q. And there were other people present? A. Yes.

Q. Do you remember who else was there? A. The secretary.

Q. His secretary? A. His girl.

Q. Did you say whether or not you would get him a character reference? A. I told him I couldn't bring him anyone from the plant because I would be putting them on the spot, and that is all that was said after that. He didn't refer to it any more.

Q. That is the last talk you ever had with him about a character reference? A. That is right.

Q. Was there anyone up there, do you remember, besides Mr. Bofinger and his secretary? A. I don't know the other people that were there.

Q. But there were some other people there? A. Yes.

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Sam Stone—For Board—Redirect, Recross

Q. You don't remember who they were? A. No.

Q. And they could hear what was being said? A. That is right.

Mr. Lumbard: That is all, your Honor.

Mr. Rose: I have just a few questions.

Redirect examination by Mr. Rose:

Q. Did you know the other people who were present at this talk with Mr. Bofinger? Did you know who they were?

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Trial Examiner Hektoen: He just said he didn't.

Mr. Rose: I thought he said he didn't remember.

The Witness: I don't know who they were.

By Mr. Rose:

Q. In response to a question by Mr. Lumbard, you said you were organizer. Didn't you testify you were a voluntary organizer? A. That is right.

Q. Meaning by that that you volunteered to act for the union in obtaining membership? A. That is right.

Q. You weren't employed by the union, is that right? A. At that particular time I was not.

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Mr. Rubenstein: I would like to ask one question if I may.

Recross examination by Mr. Rubenstein:

Q. I don't know the arrangement in the shop but the lead men are usually in the shop where the employees were, isn't that so? A. That is right.

Q. How far, for instance, from your bench was a lead man or a foreman situated? A. I would say about 10 feet.

Mr. Lumbard: Don't you think, counsel, we better fix the time because he worked in a number of different places.

By Mr. Rubenstein:

Q. Well, at the time you said that Happy solicited contributions, how far at that time was the foreman's desk or place from your bench? A. About that.

Q. And was—strike that. Did the foreman have a desk at which he was sitting or was he walking around? A. He had a desk.

Q. And was that desk in back of you or in front of your place? A. It was in back of me.

Q. And you were working at a bench; is that right, at a machine? A. No, I was working on riveting at the time.

Q. Was there any other employee working near you? A. Yes.

Q. How far from you? A. Well, right next to me.

Q. And did the lead man watch your work, or the foreman? A. At all times.

Q. Most of the time? A. At that time they didn't.

Q. When you say "at that time", what do you mean? A. At the time before I wore my steward button I wasn't watched.

Q. I mean, usually they supervise the work? A. Yes, they would come around and see what you are doing.

Q. And they would see what is doing in the territory which take care? A. That is right.

Q. And when Happy was going around from man to man to solicit collections for the welfare fund, you testified that that was during working hours? A. That is right.

Q. And the supervisor was at that time on the job? A. Correct.

Q. And the lead man was at that time on the job? A. That is right.

Q. And he came over to each employee and had the employee's name on a list? Is that right? A. Correct.

Q. And asked him for a contribution? A. Yes.

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Sam Stone—For Board—Recross

Q. And then he moved to the next employee? A. That is right.

Q. Now, this fellow Happy, was he of your immediate group? A. I don't think so.

Q. He was in the plant? A. That is correct.

Q. But he did not—strike that. He was not a member of the employees in your immediate group? A. Not that I recall.

293 Q. And that welfare organization did not consist either of your immediate working men, did it? A. I think he had a list of members of the men from the department.

Q. From the entire department? A. That is right.

Mr. Lumbard: From the department you were in?

The Witness: That is right.

By Mr. Rubenstein:

Q. The fuselage department? A. Yes.

Q. How large is the fuselage department? A. Well, it is quite a department.

Q. Quite a big place? A. Yes.

294 Q. And he was going around the entire department for collections? A. Around my section of it.

Q. And from your section to other sections? A. That I wouldn't know.

Mr. Rubenstein: That is all.

Trial Examiner Hektoen: Any more, gentlemen?

Mr. Lumbard: Just a few more questions about this welfare fund.

By Mr. Lumbard:

Q. That was for that particular department; is that what it was for? A. That is right.

Q. And what was the purpose of it, do you know? A. I think you would get \$10 sick benefit or something in case you got sick, and a lot of other benefits. I think they would give some money to boys leaving for the Army or the armed forces.

Q. That was in your little group, in the group in the department there? A. The collection was made from the fuselage department?

Q. Just for those in the fuselage department?

Trial Examiner Hektoen: Well, this thing is a fuselage benevolent fund; isn't it?

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The Witness: That is right.

Mr. Rubenstein: Just one more question.

By Mr. Rubenstein:

Q. When you were told by Mr. Bofinger about the rule against solicitation, you knew that solicitation was going on all the time in the plant by other groups; is that right? A. That is right.

Trial Examiner Hektoen: You said that you joined the union on November 10. How soon thereafter did you start distributing literature outside the gate and at the railroad?

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The Witness: Whenever we had a leaflet distribution I would volunteer and give them out.

Trial Examiner Hektoen: Do you remember the first time?

The Witness: No.

Trial Examiner Hektoen: Can you remember the first time? Was it during November?

The Witness: Well, I couldn't say exactly.

Trial Examiner Hektoen: Well, was it before the first part of this year?

The Witness: Yes.

Sam Stone—For Board—Recross

Trial Examiner Hektoen: It was? And then you kept up you said until January 12th? Now there I missed you. You were discharged on the 20th and you said the last time you distributed leaflets was the day before, and then you said that was January 12th. Did you mean the 19th?

The Witness: I probably meant the 19th.

Trial Examiner Hektoen: All right. Then I don't know whether I understood you correctly again. When you put on your button on the 14th of January did you say that Bofinger, Wesley Sergeant or Orobona and these other people began to keep an eye on you at lunch when you were soliciting?

The Witness: It was on the 14th you mean.

Trial Examiner Hektoen: That was the first day you wore your button?

The Witness: The first day I wore my button I was watched by my foreman.

Trial Examiner Hektoen: It started then; is that right?

The Witness: That is right.

Trial Examiner Hektoen: Well, what do you mean you were watched? You were watched while you were active on behalf of the union or you were watched at work?

The Witness: I was watched while I was active on behalf of the union.

Trial Examiner Hektoen: That is all I have. Is there anything else?

Mr. Rose: I have no further questions.

Mr. Lombard: No other questions.

Trial Examiner Hektoen: Thank you.

(Witness excused.)

Robert Katz—For Board—Direct

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ROBERT KATZ was called as a witness by and on behalf of the National Labor Relations Board and, being first duly sworn, was examined and testified as follows:

Trial Examiner Hektoen: Will you give us your address?

The Witness: 79 North Franklin Street, Hempstead, Long Island.

Direct examination by Mr. Rose:

Q. Did you, Mr. Katz, work for the Republic Aviation Corporation? A. Yes, sir. 302

Q. When were you hired? A. January 13, 1941.

Q. In what department? A. In maintenance department.

Q. At what rate? A. At 50 cents an hour.

Q. Until when did you work for the company? A. Until January 23, 1943.

Q. Were you discharged on that date? A. Yes, sir.

Q. What department were you working in at that time? A. In 10 shop.

Q. What was your rate at that time? A. 85 cents an hour.

Q. What was your rate at the time your employment terminated? A. 85 cents. 303

Q. Did you sign an application for membership in the charging union? A. Yes.

Q. Do you remember when? A. Oh, between January and February of 1942.

Q. Is this your signature? A. Yes.

Q. Is that the card you signed? A. Yes.

Q. When did you sign it? A. Sometime at the end of January, I don't remember when?

Trial Examiner Hektoen: It says on there, doesn't it?

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The Witness: It does, but I didn't put that date on. Somebody else did.

Q. Did you sign the card on the day it was dated, as far as you can recall? A. I don't remember.

Q. Well, was it about this date, January 30, 1942? A. Yes, that is right.

Q. Were you a member of any committee of the charging union? A. I was a member of the Republic organizing committee.

305 Q. And as a member of that committee what did you do? A. I went around asking people to join the union and having them sign application cards, speaking to them about the union, explaining the program.

Q. Were you ever a shop steward? A. Yes, sir.

Q. When did you become a shop steward? A. I was elected shop steward sometime in January in 1943.

Q. Do you remember when? A. I believe it was January 13.

Q. Were you elected at a meeting? A. Yes.

Q. And were you the steward for what department?

306 A. I was the steward for 10 department, but also it was understood that I would be a steward on a plant basis because we were in an organization growing stage and we cooperated with fellows in other departments in helping them build up the union in their departments too.

Q. Were you the only steward in department 10? A. Yes.

Q. And did you distribute leaflets outside the plant? A. Yes.

Q. Do you recall when? A. Sometime in the early part of January I distributed a leaflet in front of the plant gates, at the main intersection on the Hempstead Turnpike where it crosses—I have forgotten the name of the road.

Q. Outside the plant gate? A. That is right.

Q. What did you do as steward? A. As steward I went around speaking to people about the union and explaining our program, attending meetings, signing them up for the union, giving them application cards and I also was ready if any grievances came up to talk about them if I was able to do something.

Q. Did you wear a steward button? A. Yes.

Q. One identical with Board's Exhibit 15? A. That is right.

Q. And where did you wear the button? A. I wore it on the left side of my work shirt right next to my identification badge on a shirt pocket.

Q. And was it visible? A. Yes.

Q. When for the first time did you wear it? A. Thursday morning, eight o'clock, January 14th.

Q. Do you know Mr. Bondy? A. Yes.

Q. Did he work in your department? A. He was my immediate supervisor.

Q. What kind of a button did he wear? A. A gold button.

Q. Do you know whether he was the supervisor or sectional supervisor? A. He was my immediate supervisor and not the sectional supervisor, as I understood it.

Q. For clarification what do you mean "immediate supervisor"? A. Well, as far as I knew there were two supervisors over me. There was Bondy and there was Dogliione who was over him. Dogliione as I understood it was the supervisor of the entire 10 department and Bondy was supervisor for the section I happened to work in.

Q. Wasn't there also a lead man over you? A. Yes.

Q. And a foreman over him? A. That is right.

Trial Examiner Hektoen: Well, which one now is Bondy?

The Witness: Bondy was my immediate supervisor.

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Mr. Rubenstein: Was he over the foreman?

The Witness: That is right.

By Mr. Rose:

Q. He was over the foreman and over the lead man; is that right? A. Yes, but under Doglione.

Q. Did he ever talk to you about a union? A. Yes.

Q. When?

Mr. Whittlesey: Who is he?

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Mr. Rose: I am referring to Mr. Bondy who was above the foreman and under Mr. Doglione.

The Witness: On January 12 I had a conversation with him.

Trial Examiner Hektoen: Of this year?

The Witness: Of this year.

By Mr. Rose:

Q. Where did that conversation take place? A. It took place in my department right near where I worked, just before that my foreman came over to me and said, "Where have you been? I haven't seen you around. What have you been doing?"

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So I said, "I have been working here all the time."

Then he said, "I got a report that you were elsewhere."

I denied the fact and I said I had been working very on the job.

Then it so happened that Mr. Bondy was very near and I was very incensed at what I considered unjust accusations, so I went over to Mr. Bondy and I took out my voluntary organizer's card and told him that I was a union, voluntary organizer for the CIO, that I thought I was being hounded and bothered because they knew I was in the union, and then I said I wanted it stopped and I told him I intended to organize on my own time, that I didn't want

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to be bothered and discriminated against by anybody who objected to my union affiliations.

Then he said that he had no idea that I was in the union, that he had agreed that I had a right to be in the union and that nobody would bother me on that account. He went away for a few minutes and came back a little later and he walked over to me and said, "This is off the record but I would like to have a talk with you about the union."

Then he asked me "What do you expect to get out of a union especially during war time?"

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So I replied by stating that I thought that through a union the men in the plant could adjust their grievances and get better working conditions and improve their morale and therefore produce more for the war effort, and then he made the remark that in his opinion it wasn't so because in Brewster's production wasn't up to par. Then I said that our union strives to have labor-management committees to help increase production, to settle grievances and to talk about plans of increasing production, and in the case of Brewster's I thought that it was a matter of management's fault, primarily.

Then he asked me what grievances I had in mind and I cited a few examples. I stated something in particular about the train jam always outside where you have to wait quite a while for a train and a rush to get in and a lot of people get balled around similar to a subway rush. I stated the example of favoritism in the plant according to wage rates where in my opinion it was very wide-spread and caused a lot of discontent.

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Then I cited to him an example of my own particular instance of other fellows' experience too, at the last minute, when they were supposed to be working on Sunday and when they were notified Saturday afternoon just a

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few minutes or so before quitting time when they were asked to work and they were put on the spot, and we felt very upset because we had plans on Sunday.

During this conversation he replied and told me that as far as he knew when there was work to be done on Sunday we would be notified on Thursday and in his department that was to be so.

So I said it was never told to me before but I am glad to hear about it.

Q. You mentioned Mr. Doglione. A. Yes.

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Q. He was the sectional supervisor in your department? A. That is right.

Q. After your talk with Mr. Bondy, did Mr. Doglione speak to you? A. He spoke to me the next day.

Q. That would be when? A. January 13th.

Q. And where did that conversation take place? A. I was called into his office and it took place there.

Q. Who was present? A. I believe there were one or two other people but I don't remember them.

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Q. You mean in addition to you and Mr. Doglione? A. Yes, but they were not listening to the conversation. I think there was a girl who is a clerk there, and I think also a head man was talking to her, but we were speaking together and as far as I know they were not listening to the conversation.

Q. What was the conversation that you and Mr. Doglione had? A. Well, he opened it up by saying that he knows that I am an old employee here and that all of a sudden he is hearing about numerous complaints concerning me, and then he cited an example and he said, "You have been asking for a special day off instead of Sunday, namely Thursday."

So I told him that as far as I knew there were no complaints about me and that I had not asked for a Thursday

off instead of Sunday but that the reason why I thought he asked me the question was because I had asked Mr. Bondy about notification for work on Sunday, and he had told me that we were supposed to be notified on Thursday if we were going to work on Sunday and that I had told the lead man what Mr. Bondy had told me, and that is the reason why the question came up.

I told him that he was misinformed.

Then he said, "Well, if I hear any more complaints about you I will fire you on the spot even if you have been here a while."

So I said to him, "I am a good worker, you just gave me a ten cent merit raise and I think that these complaints are coming up about me not because of what you explained before but because of the fact that I am a union man and because of the fact they are bothering me on account of that."

Then I stated that I was going to organize on my own time and I had a right to be in the union, I knew my rights and he said that he admitted that I had a right and he even said that he used to be an old union man and had nothing against it.

Then he started a conversation about union grievances. He began by stating what was wrong here. If there is any grievance I can take care of them and I explained that even though I had heard his particular case, that the best man couldn't take care of all the grievances in Republic, and I stated that all union had wanted a grievance machinery set up and I took out a leaflet that had been put out a few days previous or about that time in which there was a letter on it, a copy of a letter that was sent from the UAW office, signed by Charles Kerrigan to the management.

I said that that is what we wanted. We discussed it some more and during the conversation he admitted to me that up to the conversation that my work had been satis-

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factory and that it was O. K. with him and just the last few days he had heard about me.

So he said, "Come on, let's go out of the office and go over to the foreman and straighten this thing out."

So we left the office as we were walking along near where I worked, about a minute's walk, a couple of minute's walk.

Q. Excuse me. Have you finished the conversation with Mr. Doglione? A. Yes, I have finished the conversation.

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By Mr. Rose:

Q. Mr. Katz, yesterday afternoon you were testifying about a conversation which you had with Mr. Doglione, your section supervisor, and I think you stated it occurred on January 13th. Is that correct? A. That is right.

Q. In looking at the record, I find it shows you said in the course of describing that conversation the following, and I quote from page 153:

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"Then he started a conversation about union grievances. He began by stating what was wrong here. If there is any grievance I can take care of them, and I explained that even though I had heard his particular case, that the best man couldn't take care of all the grievances in Republic", and so forth.

I would like to have you tell us what you said in that connection, and what Mr. Doglione said in that connection.

Mr. Whittlesey: May I interrupt? I notice that the statement at page 153 appears in the record as Mr. Rose read it, but my own recollection is that Mr. Katz said "I started a conversation about union grievances" and "I began by stating what was wrong."

I wonder if you would develop it?

Mr. Rose: I want it clarified just what the situation was, and that is what I am doing and that is why I am asking the question.

Mr. Whittlesey: I think we have the statement in the record.

Mr. Rose: My recollection does not conform to yours, but I thought we would get it from the witness.

Trial Examiner Hektoen: What is the situation?

Mr. Whittlesey: I think it should be "I started", and not "he", Mr. Examiner. I think there is a mistake.

Mr. Rose: My recollection does not conform with Mr. Whittlesey's—or rather I did not know what your recollection was, Mr. Whittlesey, but in order to clarify it, I wanted to get it from the witness.

Trial Examiner Hektoen: Let us get it over again. If there is a difference of opinion on what the record should be, I do not know exactly how you can iron it out except by getting the witness to state it again.

By Mr. Rose:

Q. Do you understand the question? A. Will you please have read what I said yesterday, a moment before that, so that I can just remember how I started that conversation, and just what I said yesterday.

Mr. Rose: Is there any objection to my showing him the transcript?

Mr. Lumbard: I should not think the witness would need it, because he knows what happened.

Trial Examiner Hektoen: I will tell you what we can do, namely, ask the witness this:

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You talked to Doglione when he called you into his office, and you told us about that, and that you were an old employee, and there were a lot of complaints against you, and so forth and so forth.

Suppose you take up from there.

The Witness: Then he mentioned one of the complaints and said that they wanted a special day off, Thursday instead of Sunday, and I denied that I wanted any special privileges, and I pointed out to him that the basis for what I had said when I spoke to Mr. Bondy, before I asked him about proper notification for Sunday work, and Mr. Bondy told me we were supposed to be notified Thursday, and I went in and informed my lead man about it, and I said it got back to him in a twisted way, and I never asked for any special privileges.

Then he went on to say that if he did hear about any more complaints about me, he would fire me on the spot.

I remember telling him that I was a good worker, which he admitted, and I also brought out the fact that the reason the complaints were against me, in my opinion, was because of the fact that I was a union man, and then I went on to mention that I was a union man and I was going to organize on my own time, and I had a right to do so.

He admitted it, and he said, "Go ahead; I was a union man too, once."

Then we started a conversation about union grievance. I don't recall whether I opened it up by mentioning the complaint, or he did, but we started talking about grievances, and I told him there were a lot of them around here who needed a union to handle their grievances, and right now the union was demanding grievance machinery.

And I pulled out a leaflet and showed it to him, and on that leaflet there was a copy of the letter sent to the Republic management by our union, and he read it and he began saying "Things are all right", and he could handle all the grievances, and he thought he was a fair enough fellow, and any grievances would be handled, and if they got out of hand, he could handle them also through the lead man and the foreman, and so forth.

Then I pointed out it was impossible for him to handle them, because there were too many of them. He said, "Why don't I hear about them?"

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I said, "They never get that far."

I remember at that point I once again insisted that I had a good record. I was a good worker, and pointed out I got a ten cents an hour raise, and Doglione admitted I deserved it, and he said, "Let's go outside and see the foreman and try to settle the trouble."

We went outside toward where I worked, and just before we got there, Mr. Bruno appeared and asked what was the matter. I told him we were talking about the complaint of proper notification for Sunday work, and he said, "You should be informed on Friday."

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So I said, "I have been told on Thursday it was all right with me, as long as we get the proper notification", and the conversation broke up and I went back to work.

By Mr. Rose:

Q. Had you asked for Thursday off? A. No.

Trial Examiner Hektoen: What foreman was it you were talking to?

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The Witness: Bruno.

By Mr. Rose:

Q. Who is Mr. Bruno? A. Mr. Bruno is superintendent of the production plant.

Trial Examiner Hektoen: Is that the one you talked to regarding notification as to Sunday work?

The Witness: He came over and asked what the trouble was.

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Trial Examiner Hektoen: I see.

The Witness: He was not the original supervisor I spoke to about it.

By Mr. Rose:

Q. You met Mr. Bruno as you and Mr. Doglione were walking out of Mr. Doglione's office; is that right? A. We left the office and went about 200 feet away, and he suddenly came up and inquired what the trouble was, when he saw me talking to Mr. Doglione.

Q. In that conversation, what did Mr. Doglione, so far as you can recall, say about the handling of grievances?

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A. He said that he thought he could handle them all by himself; that he was a pretty fair natured guy, and I admitted it, and I didn't think there was anything wrong with him, because I did not have any dealings with him, but did not think it was possible for one man to handle them all.

Q. You referred to an increase in your compensation. Had you received an increase? A. Yes, sir.

Q. About when? Do you recall? A. I got an increase January 2, 1943.

Q. How much of an increase was it? A. A ten cent merit raise.

Q. Ten cents an hour? A. Yes.

Q. You say that was a merit raise? A. Yes, sir.

Q. When you say "merit raise", what do you mean?

A. As I understand it, that is in recognition of proven ability of work.

Q. Do you mean you distinguish that from an automatic increase? A. Yes, sir.

Q. I think you testified as to when you wore the steward's button for the first time. A. Yes, sir.

Q. When was that? A. Thursday morning, at eight o'clock.

Q. What date? A. It was Thursday morning, January 14th.

Q. 1943? A. Yes.

Q. I think you told us where you wore it. Is that right?

A. Yes, sir.

Q. Beginning with that day, did you wear that button, as you described, while you were working in the plant? A. Yes, sir.

Q. Did you wear it every day up to the time of your discharge? A. Yes, sir.

Q. I am talking about working days, of course. A. I wore it every day except one afternoon when I had been requested to take it off, and I did temporarily.

Q. Now did Mr. Doglione speak to you on January 14th, the first day you wore the button? A. Yes, sir.

Q. About what time of the day was that? A. It was in the afternoon. I would say about three.

Q. Had you been wearing steward's button up to that time? A. Yes, sir.

Q. And where did this conversation take place? A. Where I was working.

Q. Who was present? A. Myself and Mr. Doglione.

Q. What was said, and by whom? A. He came over to me and said, "I am giving you a release." I said, "Why?"

He said, "You have been loafing on the job. You drove three holes in 25 minutes."

Then I looked at him and denied it.

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Trial Examiner Hektoen: What did you say?

The Witness: I said, "I have been working steady right along. I don't know what you are talking about."

Then I went on to say, "You are not surprising me what you are doing now."

I said, "Ever since I have been wearing this button—and I told him why I had been in the union—a thing like this was expected."

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He got angry and said that I was not a good mechanic, and he had made a mistake in giving me the raise, and I should have been fired a long time ago, and I had been loafing, and that there were three complaints made against me with regard to loafing.

I once again denied the issue of loafing, and I said I was not, and that I had been working steady. I said, "These things have happened before in bigger companies than Republic, and bigger companies than Republic have tried to do this and have been restrained by law."

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I pointed out the case of the Ford Motor Company, and I said, "You go up to the office and tell them that if they do this thing to me, my union will stand behind me and they will have a suit to meet," and he walked away very angry.

By Mr. Rose:

Q. Had there been any complaints about you then, so far as you know? A. No.

Q. On the previous day, so far as you know, had there been any complaints about you, other than your conversation with Mr. Doglione? A. No.

Q. Now getting back to January 14th, did you inquire after Mr. Doglione spoke to you as to whether or not there were any complaints? A. Yes, I did.

Q. Whom did you speak to? A. I went over to my foreman.

Q. What was his name? A. Zilensky.

Trial Examiner Hektoen: Then what happened?

The Witness: I said, "Mr. Doglione says there have been three complaints against me. What are they?"

So he said, the first one is Eddie, the lead man—no. He said, "The first one is that you weren't doing the work that you should do; you were sorting out parts."

So I told him that my lead man, Eddie, had told me to sort out these parts, because there was a shortage of actual parts to work with, and we had nothing to do, when we were trying to account for it.

He said, "You should not have done that."

I said, "I do what I am told to do."

He said, "You are a high-priced man and should know better", and I insisted I do what I am told to do around the job.

Then I asked him for the other complaints, and he said, "Eddie, the lead man, made one, and Murphy, who was the new foreman coming into the job also made one."

I said, "What were the complaints?"

And he refused to tell me what they were. Then I told him he was lying, and he got very angry and he said, "Look what you are doing, going around agitating and causing a lot of trouble."

By Mr. Rose:

Q. Did you inquire of Mr. Murphy as to whether he had made any complaints? A. Yes, I did.

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Trial Examiner Hektoen: Is that what you said to Zilensky or what Zilensky said to you in that connection?

The Witness: Then I walked away from him.

Trial Examiner Hektoen: All right.

By Mr. Rose:

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Q. Did you talk to anyone else about whether there had been any complaints? A. I went over to my lead man, Eddie, and I asked him whether he made any complaints about me at any time that day, and he said no, he had not, and he said he did not go to make complaints to the foreman about fellows; he doesn't like the practice.

Q. What was Eddie's last name? A. I do not know his last name, to tell you the truth.

Q. Was it Eddie Metzker? A. I didn't know him except as Eddie in the plant, but I did know him as Eddie.

Q. Have you since found out his name was Eddie Metzker? A. Yes.

Q. Was that his name? A. So far as I know, yes.

Q. He was your lead man then? A. Yes.

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Q. You referred to Mr. Murphy. What was his job at that time? A. He had been promoted to foreman on that job, to replace Zilensky, and I went over and asked him if he made any complaints about me, and I said, "What is it all about?"

And he said, "I am not speaking."

I said, "Look, Murphy, you are a nice guy, and trying to get ahead, and you do not want to speak."

I said, "All I want to know is if you made any complaints against me", and he hesitated for a moment and he said, "All I know is I asked you to work on a drill job", and I said "O. K., Murphy, that's all I wanted to know", and I walked away.

Q. Had you been put on sorting work that day, prior to the time Mr. Doglione spoke to you? A. Yes, sir.

Q. Who put you on that work? A. My lead man, Eddie Metzker.

Q. Eddie Metzker? A. Yes, sir.

Trial Examiner Hektoen: Let me interrupt. Mr. Katz, you talked of a foreman named Zilensky, and then talked of another foreman, Murphy, who replaced him on the same day. How did that work?

The Witness: Zilensky was becoming a supervisor and was promoted, and he was still acting in his old position in order to help break in the new foreman, and they were working side by side on the same job.

Trial Examiner Hektoen: All right, thank you.

By Mr. Rose:

Q. Did you see Mr. Lasker that day? A. Yes, sir.

Q. About when was that? A. Oh, about half past four.

Q. That was after the conversation with Mr. Doglione?

A. Yes, sir.

Q. And where did you see him? A. Up in his office.

Q. And how did you happen to go to his office? A. Mr. Doglione came over to me and told me that Mr. Bruno wanted to see me. So I went up to Mr. Bruno's office, and he took me in to Mr. Lasker's office.

Q. Who is Mr. Lasker? A. I believe he is the factory manager of the plant.

Trial Examiner Hektoen: How do you spell it?

Mr. Rose: L a s k e r. He appears on—

Trial Examiner Hektoen: Never mind.

By Mr. Rose:

Q. Was there a conversation in Mr. Lasker's office? A. Yes, sir.

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Q. Who was present? A. Mr. Lasker, Mr. Bruno, and Mr. McDonald.

Q. Who was Mr. McDonald? A. I believe he is head of the production control department.

Q. Is that so far as you know? A. Yes, sir.

Q. Will you tell us what was said, and who said it? A. Mr. Lasker opened up the conversation and said that he had heard I had gotten into some trouble, and he pointed out that since I was an old employee there, that the company has a practice where they don't like to discharge men, but like to reconsider their cases because of their record of work, I mean the amount of time you have worked there.

Q. Is this what Mr. Lasker said? A. Yes—not his exact words, but words to that effect. That is how we opened up the conversation.

Q. All right, continue. A. Then he stated that he heard that I was loafing, and I denied it, and then Mr. Bruno said that he had been watching my work, and he pointed out I drilled two holes in 20 minutes. Once again I denied that I had been loafing.

Q. What did you say? A. I said that I was not loafing; I was doing my work.

Q. Continue with the conversation. A. Then Mr. Lasker said that—I don't remember the exact words but we opened up a conversation about soliciting, about company rules.

Q. Did Mr. Lasker say anything more about whether or not you were fired at that time? A. A little later he did.

Q. All right, continue with the conversation. Tell us the conversation in your own way. A. He pointed out that according to company rules you could not solicit, and I said "What do you mean by that?"

He said, "Well, you can't talk about the union, and you can't pass around application cards."

Then I asked him the question and I said, "Let me get this straight. You say I can't talk about the union?"

I said, "Supposing I am sitting eating my lunch, during the lunch hour, and a friend of mine comes over to me and says, 'Hello Bob, how is the union going?', what am I supposed to say to him, according to company rules?"

"You are supposed to say", he said, "I am sorry, I can't speak to you. We are on company property. Please see me outside company property, before we can discuss the conversation—discuss the union."

He then pointed out that he saw my steward's button, and then I asked him, "Am I allowed to wear a union button?"

He said, "You can wear any kind of union button, any kind of CIO button, in any amount you want to."

Then he told me that I should go back to work and obey the company rules.

He told me or he said that I would be reinstated, with the events of the past few days forgotten, that my record was clean, and so I went back to work.

Q. Now after that, was there any talk—strike that, please.

Did Mr. Doglione, after that occasion, talk to you about company rules? A. Yes, sir.

Q. When was that? A. The following day.

Q. That would be when? A. January 15.

Q. 1943? A. Yes, sir.

Q. What did he say about the company rules? A. He called me in the office in the afternoon, and he accused me of breaking the company rules again.

Q. What did he say? A. He said, "You had tried to go up and see Mr. Lasker in the morning. You are breaking company rules."

I told him I tried to go up and see him twice, and each time before I seen him I went to my foreman and got a pass from him, and that was the only way I knew of going

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up, and he said I was breaking the company rules because I did not come to him first.

Then he said—

Q. Did he mention the union in that conversation? A. Yes, sir. He then said, "What are you trying to do? Get me?"

He said, "You know I had you fired at 4:30, and later on you were rehired. You are trying to make a damn fool out of me."

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Then he said, "If you have got anything against me, we can go outside and settle it man to man."

Then he said, "I am warning you, I am just telling you, if you step out of line, I will fire you on the spot," and he said, "You can pass that out and tell it to all the rest of your union boys."

I told him I had nothing against him personally, but I did what I thought was right, and he told me to go back to work, and I did.

Q. After that did any company official talk to you about the steward's button that you have been wearing? A. Yes, sir.

Q. When was that? A. It was about eight days later.

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Q. At approximately what time, please, if you can state? A. I remember the exact date. It was a week later, the following Friday, January 22nd.

Q. Where did the conversation take place? A. It took place in one of the rooms in the office building, on the second floor.

Q. Were you called to that room? A. Yes, sir.

Q. Who was present? A. Mr. Kress was present, Mr. Lasker was present, and Mr. Doglione was present.

Q. Mr. A. L. Kress? A. Yes, sir.

Q. The man who was assistant to the president of the company? A. I think so.

Q. Tell us what the conversation was, what was said,

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and who said it. A. Mr. Lasker opened it up by saying that he heard that I had been trying to see him, and he wanted to discuss the situation with us, and possibly smooth it over. Then we went into a discussion of solicitation and company rules, with Mr. Kress doing most of the speaking.

Q. Tell us what was said, please. A. To the best of my ability, because I can't remember every sentence that was related,—

Trial Examiner Hektoen: That is right.

The Witness (Continuing): Mr. Kress pointed out to me that we could not go around soliciting, passing out union cards, because it was against the company rules, and I told him, or I pointed out that if that were done it would be impossible for us to organize, and that was against the Wagner Act, as I saw it.

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Then he pointed out if he were to allow me to go around passing out cards, they would have to allow every man to go around, and it could not be done, because it would cause a lot of disruption.

I still maintained that I thought that if such a thing were done, it would deny us the right to go around and organize fellows into the union, and he pointed out that he didn't say we could not organize but that we could not solicit.

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So I asked him a question. I said, "Are we allowed to talk about the union?". And he said, "Yes, sir."

Mr. Lombard: That is, if you were allowed to talk about the union?

The Witness: I asked him if we were allowed to talk about the union, and he said that we were, but he pointed out that we were not allowed to ask anybody to join a union.

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Robert Katz—For Board—Direct

I asked him if we were working on the job, and our hands were in motion, and we were very close, with other people close to us, and at that time conversation was very normal, even though working—I asked whether or not you were allowed to talk about the union, and he said, "Sure you are. The place is not a concentration camp."

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Then he asked me about my steward's button. He asked me to define what a steward was, and I defined it as a man who was elected to represent a certain number of members in his department or group, and that he was mainly to help build up a union at this particular stage. He asked me when we were elected, and I told him.

Then he pointed out to me that to wear a union steward's button at this point, when the union was not certified in the shop as the bargaining agent, was misrepresentation. I told him that I was not sure that he was right; that offhand I didn't believe it, but that I would discuss the matter and think it over, to find out whether he was right, because he asked me to take off my button.

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By Mr. Rose:

Q. Who asked you? A. Mr. Kress. So I told him that I would take the button off temporarily, until I could ascertain whether it was within my right to wear it or not, and if I found out that it was within my right to wear it, I would put it on again.

Mr. Lasker said, "If you do put it on again, we will be forced to have you discharged", and he told Mr. Doglione, "If Katz puts the button on again, please dismiss him."

Then I pointed out at the end of the conversation that if I were to put the button on, or were to take any action

for the union, it would not be a question of spite or personal hatred, but with me it was a matter of right, or what constituted my constitutional rights, and I thought we were here as union members to cooperate with the company officials as much as possible, within our rights, and the meeting broke up after that.

Q. Then you went back to work? A. Right.

Q. Did you wear the union or steward's button? A. I wore it the next day. I took it off that afternoon, but when I left the meeting, I put it on and wore it the next day to work in the morning.

Q. The button you are referring to is the steward's button which you have been describing; is that right? A. Yes.

Q. The next day was January 23rd, 1943? A. Yes, sir.

Q. What happened that day after you returned to the plant wearing the button? A. Mr. Doglione passed me in the morning and looked at me, and I told him I found out it was within my rights to wear it, and I was going to.

Trial Examiner Hektoen: Don't tell us what you did, but did you investigate and find out that it was within your rights? Is that right?

The Witness: I talked it over with the union people, other people in the union.

Trial Examiner Hektoen: And concluded to wear it?

The Witness: Yes, sir.

Trial Examiner Hektoen: All right.

The Witness: Mr. Doglione said, "You know what they told me. I am going up to the office and find out what they are going to do."

At three o'clock he came back and said, "Your release is being made out. You better get ready and have your tools all packed and check out."

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Robert Kutz—For Board—Direct

While I was waiting for my tools to be all checked out, he came over and started speaking to me again, and he said, "I will admit you have been a good worker around here, good man, good mechanic, and I am sorry to see you go."

He said, "I sure hope you don't stick out your neck for the other guys."

We started talking about the union after that. I was pointing out the advantage of it and he was pointing out what he thought were the disadvantages.

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By Mr. Rose:

Q. What did he say? A. He told me he did not like it because he stated he had a bad experience or somebody took his money or something, and he was still waiting for the money.

We talked about other things, like wages, and I pointed out how low they were at Republic, and he insisted they were high, and we could not agree, but it was a friendly conversation, and after I left him it was time to quit, and so I left the job.

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Q. That was the last time you worked in the plant? Is that right? A. Yes, sir.

Q. Did you ever, during the time you worked for the company, have anything to do with getting volunteers as blood donors for the Red Cross? A. Yes, sir.

Q. When was that? A. Last summer, in June, me and a number of other fellows got together and decided to volunteer to donate a bit of blood for the Red Cross blood donating drive.

We went around and asked different fellows to volunteer, and we got about 175 fellows to do that.

Q. How did you do that? How did you get the volun-

teers? A. We took slips of paper and just went around and asked them to sign their names to pledge to give their blood at a future date.

Q. Who were the other men who did that with you? Do you recall? A. Well, there was a fellow named Duke. I know where he works, and he is very well known by that name, but I do not know his last name.

Q. Where does he work? A. He works in the 01 shop.

Q. Do you know who his lead man was at that time? A. I think he works on a stretching job.

Q. Anybody else? A. A fellow named Irving Zabin-sky, who is in the Army now. 374

Q. What did you fellows do? A. We drew up lists of volunteers, and then I took the lists up to the office building, and I discussed the matter with a man in the public relations office, whose name I thought was Mr. Wilson, but I was not sure. It was not this Mr. Wilson.

Q. Is there another Mr. Wilson there? A. I don't know. I don't know, or I am not sure what his name was.

Q. How did you get this list of volunteers? A. On our own time we just went around and solicited.

Q. Where did you do it? A. On company property, during lunch hours, in the aistes, with the fellows standing around. 375

Q. Did you get any of the supervisory rated employees to volunteer on the list? A. I got one of them.

Q. Do you remember who it was? A. I remember his first name very well.

Q. What was his job? A. He was foreman of aileron. He was my foreman at that time. His first name is Ozzie, or it might have been an abbreviation of his last name, but Ozzie is what he is known as.

Q. Did he volunteer? A. Yes.

Q. Did he see you fellows going around with the lists? A. Oh, sure.

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Robert Katz—For Board—Direct

Q. Any other supervisory rated employees see you do that in the plant, so far as you can recall? A. I don't know.

Q. Did you take the list up to any official aside from the man you thought was named Mr. Wilson? A. Yes, sir—I didn't take the lists, but I did discuss the matter also with another company official.

Q. Who was that other company official? A. Mr. Hargraves.

Q. What is his job? A. I believe he is personnel director of the plant.

377 Q. Did you tell Lim about getting these lists of volunteers? A. Yes, sir.

Q. What did you tell him? A. Well, I had gone up there with a proposal to ask to have the company cooperate on this thing so that we could use the hospital facilities and have a Red Cross unit come down.

Mr. Rubenstein: I think the answer is not responsive. If I remember correctly, you asked him how he got the lists. Is not that right?

Mr. Rose: That is right.

The Witness: Will you please repeat it again?

Mr. Rose: Repeat the question, Mr. Reporter, please.

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(Question read.)

The Witness: I told him that we had a list of 175 people, which somebody else in the office had a copy of, and I told him that I would like to discuss with him how we could arrange to have the blood taken from the fellows.

By Mr. Rose:

Q. Were you ever asked to buy tickets to any sporting events in the plant?

Trial Examiner Hektoen: Wait a minute, Mr. Rose. Do you not think we should have the conclusion of this conversation, just in the interest of everybody?

Mr. Rose: I thought it was concluded.

Trial Examiner Hektoen: What happened? What did Hargraves say?

The Witness: He thought it was a splendid idea but at the present moment the company could not cooperate.

Trial Examiner Hektoen: That was the end of the situation? 380

The Witness: No. Those words summarize what actually happened, but that is not the end of that particular conversation.

He said that he was heartily in accord with the idea, but that it would be interfering with production facilities. So that I proposed that we use the hospital, and he did not think it available right now, and he advised me to go ahead on my own and ask fellows to go around the plant and get them to give their own blood to the Red Cross donating centers.

Trial Examiner Hektoen: That was the end of that? 381

The Witness: Yes, sir.

Trial Examiner Hektoen: All right.

The Witness: He also pointed out that I could keep in touch with him once in a while.

By Mr. Rose:

Q. Now were you ever asked to buy any tickets to a sporting event? A. Oh, yes.

Q. At the plant? A. Yes.

Q. When? Do you recall? A. Yes, about January 20th or 21st.

Robert Katz—For Board—Direct

Q. January 20th to 21st? A. I know it was around that date because it was a day or so before a boxing event, to be held in the Republic club house on January 22nd.

Q. What year are you talking about? A. 1943.

Q. Who asked you to buy tickets? A. One of the boxers of the team, a fellow named Frank Masters.

Q. Where did he talk to you? A. He talked to me in one of the smoking aisles during lunch hour.

Q. Did he have any tickets with him? A. He had a whole stack of them. He was going around asking different fellows, and he came over and asked me, and I told him I wasn't sure, and he asked me the next day again.

Q. Also during lunch hour? A. Yes.

Q. About how large a stack of tickets did he have? Will you describe it? A. He pulled out a whole group he had in his hand, about like that (indicating).

Q. About an inch thick? A. About that much (indicating).

Q. A pile of tickets about an inch thick? A. Yes.

Q. Did he offer you any tickets? A. Yes, he took out two of them and he was ready to give them to me and he said, "Are you going to take them?"

Q. But you did not see him ask anybody else to buy tickets? A. Well, there were a couple of fellows around there at noon, and he asked them, too.

Q. Do you recall whether you were ever asked to buy tickets for a social event? A. Oh, yes, sir.

Q. When, so far as you can recall? A. It was a dance given by the Volunteer Firemen's Group at Republic, to be held January 30th at the Republic club house, and I was approached twice by two different people.

Q. January 30th of what year? A. 1943.

Q. Where were you approached? A. During lunch hour, and right near where I worked.

Q. Who were the people that approached you? A. A

fellow named James Lucas asked me to buy one ticket. He was a volunteer fireman.

Q. Was he an employee of the company? A. Oh, yes.

Q. Who else? A. A fellow named Jimmy, a jig worker in the department next to me on the spars. I do not know his last name, but he is an Italian fellow.

Q. What department is it? A. It is part of 10 shop, spar assembly, and he maintains the jigs in the spar.

Q. Did Lucas have any tickets with him when he spoke to you? A. I remember him taking out a few and offering one.

Q. What did he say? A. He said, "Do you want to come to our affair?" and showed me the ticket.

Q. What did this other fellow tell you? A. Something on the same lines, "Are you coming to our dance?"

Q. Did anyone ever talk to you in the plant about the purchase of tools? A. Oh, yes.

Q. Who? A. That would happen through actually buying them. There is a stand where you can buy tools, which was situated on the northwest corner of the plant, and as you came out of the tunnel into the plant, the tools are always situated on a work bench, and the same fellow would always be selling them, and as long as I was in that assembly plant, for over a year, every single day he has been selling tools.

Q. When would you see him doing that? A. Before eight o'clock; before working hours.

Q. What does he do? Put out a display of tools? A. That is right, he puts out a display of tools.

Q. Did he ever talk to you about it? A. I have bought tools from him, and I asked him the prices and gave him the money.

Q. Did you buy tools from him? A. Yes, sir.

Q. Do you know the man's name? A. I do not know the man's name. He is a very well known fellow, and he is very easily identifiable.

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Robert Katz—For Board—Direct

Q. Will you identify him or describe him? A. He has got a mustache.

Q. How tall is he? A. I would say about five feet six.

Q. Does he wear glasses? A. No. He is dark, and he is dark-haired, and his conversation is hardly understandable.

Q. Is he an employee of the company, so far as you know? A. Yes, I think he works in 40 shop.

Trial Examiner Hektoen: Was this his own business or what?

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The Witness: So far as I can see, this was his own business.

Trial Examiner Hektoen: He just comes and sits there and opens up his wares and sells tools until time to go to work?

The Witness: That is right, and then he closes them up and goes to work.

Trial Examiner Hektoen: O. K.

By Mr. Rose:

Q. About how large a display does he put out, if you can tell us? A. There must be as many as 50 tools.

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Q. Does he spread them on a bench? A. Yes, sometimes they would take up a space—can I show?

Q. Yes. A. From here to here (indicating on the desk), screw drivers, spinners and wrenches, and he would have his tool box in the back with all kinds of tools in it.

Q. How much space would the tools cover, approximately? A. As I said about as much as this table.

Mr. Rubenstein: About six feet?

Mr. Rose: No.

By Mr. Rose:

Q. Is it about four feet? A. Yes.

Q. Do you know an employee named Edward Ainsmith?

A. Yes, sir.

Q. What was his job? A. At one time he was sports director of Republic.

Q. Do you know if that name is spelled A-i-n-s-m-i-t-h?

A. I think so, but I am spelling it from pronunciation.

Q. Did he ever talk to you about sports? A. Yes.

Q. When was that? A. Last spring, about May or June some other fellows and myself decided to have a soft ball team, and I used to go and speak to him about it, in order to make arrangements to get the balls and bats and so forth.

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Q. Did you ever talk to him about getting a group together to play soft ball? A. Yes, sir.

Q. Did he tell you what to do? A. He told me to go around and talk to the different fellows, to get them together.

Q. Did you do that? A. Yes, sir.

Q. Where did you do it? A. During lunch hour, and the fellows that I knew who worked near me, and worked in the next shop right next to me.

Q. You did it in the plant? A. Yes, sir.

Q. Did you wear an RSO button in the plant? A. No.

Q. Did you see any other employees wearing them? A. Oh, yes.

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Q. Now up to the time of your discharge, was there any other type of union button worn in the plant, aside from the steward button, so far as you know? A. Yes, sir.

Q. Up to the time of your discharge? A. That is right.

Mr. Whittlesey: I didn't hear the answer, Mr. Reporter.

Trial Examiner Hektoen: Read the answer, Mr. Reporter, please.

(Answer read.)

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Robert Katz—For Board—Direct

Mr. Rubenstein: I would like to have the question repeated, because I do not think he understood it. I don't know whether he did or not.

By Mr. Rose:

Q. Will you look at Board's Exhibit No. 15 and tell us, if you know, whether there was any other kind of button worn in the plant up to the time of your discharge? A. On the very same day that I was discharged, for the first time we wore a different kind of button.

395 Q. Who wore a different kind of button? A. One of the other fellows put it on.

Mr. Lumbard: You mean a CIO button?

The Witness: Yes, sir.

By Mr. Rose:

Q. You referred to what you call soliciting for the union. Just what did that consist of? A. I would go around the shop, to the fellows that I knew, about the union, and ask them if they wanted to join, and if they did I would give them an application card, and they would sign it and fill it out.

396 Q. And the application card you referred to is the type of card like Board's Exhibit No. 14? (Handing exhibit to witness.) A. That is right.

Q. What were the hours of work when you were working in the plant in January of this year? A. There were two shifts, a day and night, and the day shift was from 8:00 a. m. to 6:30 p. m., and the night shift from 6:30 p. m. to 5:00 a. m. the following morning.

Mr. Rose: No further questions.

Mr. Whittlesey: It seems to me that if the union has questions on direct, they should ask them now.

Trial Examiner Hektoen: Have you any questions, Mr. Rubenstein?

Mr. Rubenstein: I might ask some questions now.

Cross examination by Mr. Rubenstein:

Q. You joined the union about January 30, 1942. Is that right? A. That is right.

Q. You have attended the meetings of the union since that time? A. Yes, sir.

Q. During the later part of the winter—strike that. During the early part of 1942 and the summer of 1942, where were your meetings held? A. We used to hold meetings at Hempstead weekly.

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Q. And at those meetings did you discuss the problems of organization at Republic? A. Yes, sir.

Q. You functioned as a Republic organizing committee; is that right? A. That is right.

Q. And you discussed various problems of how to approach new employees and have them join the union? A. That is right.

Q. Did you ever discuss at your meetings the attitude of the company toward unionism?

Mr. Whittlesey: It seems to me that that is not pertinent here, as to what they may have said amongst themselves.

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Trial Examiner Hektoen: I do not know, but if they did discuss it, I think he may answer. Did you?

The Witness: Yes, sir.

By Mr. Rubenstein:

Q. What were the discussions?

Mr. Whittlesey: I object.

Trial Examiner Hektoen: Sustained.

By Mr. Rubenstein:

Q. Did you discuss the question at any time of putting on buttons? A. Yes, sir.

Robert Katz—For Board—Cross

Q. What was the discussion about putting on buttons?
A. Well, some people thought that we should put them on, and most of us disagreed and we thought it was too risky. We thought that if we put them on, we would be fired.

Q. And you had decided on—correction there. And such discussions took place at one of several meetings?

A. Yes, sir.

Q. At several meetings? A. Yes, sir.

Q. And you from the meetings decided against putting on buttons because you thought you would be fired? A. Yes, sir.

Q. When did you decide to put on buttons? A. On January 13th of this year, 1943, we decided.

Q. At a meeting? A. At a meeting at Farmingdale.

Q. You had later on your meeting at Farmingdale. Is that right? A. Yes, sir.

Q. That was the first time that your organizing committee, or any of them, had put on buttons? A. That is right.

Q. And before that day no buttons were worn by any of this group; is that right? A. That is right.

By Mr. Whittlesey:

Q. Mr. Katz, I believe you testified that a decision was reached at a meeting on January 13th to put on buttons. Is that right? In other words, that was the day before buttons were actually worn; is that correct? A. Yes, sir.

Q. And January 14th was the day they were first worn? A. Yes. I would like to point out that the decision which was reached was that people should put on buttons.

Q. I didn't ask you that, but your answer to my question is "Yes"; is that right? A. (No response.)

Q. I will put it this way:

The decision to put on buttons was reached at a meeting on January 13th; is that right? A. I am not so sure as to the decision you have got in mind. I can't answer you "Yes" exactly, but would have to qualify it.

Trial Examiner Hektoen: The evidence so far shows that you wore a steward's button on the 14th. Was the decision which caused that reached on the 13th?

The Witness: Yes, sir.

Trial Examiner Hektoen: All right.

By Mr. Whittlesey:

Q. And the buttons which you decided to wear at that meeting on the 13th, were these steward's buttons? A. Yes.

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Q. Is that correct? A. That is right.

Q. Can you tell us approximately how many persons participated in the making of that decision on January 13th? Just roughly, I mean? A. I don't believe that I can answer the question, because of what happened that day.

Q. I think you can tell approximately how many were present when making the decision.

Mr. Rubenstein: I would like to know what effect it has, how many were present or how many were not present.

Trial Examiner Hektoen: He may answer.

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The Witness: The point is that no particular member participated in making the decision about who should wear the buttons.

By Mr. Whittlesey:

Q. I am not asking who, in making the decision at all. I have not come to that yet.

Mr. Rubenstein: I would like to enter a formal objection. It has no bearing on the issues. There may have been 10 or there may have been one thousand. As long as the union decided, the decision

Robert Katz—For Board—Cross

was made, and whether a small group or a tremendous group does not matter.

Trial Examiner Hektoen: I know what you have in mind, but he may answer this question on the basis of any knowledge he may have. About how many people participated in this decision?

The Witness: One. The way I understand the question, I will say one, because the way the decision—if I may be permitted to continue to speak—the way the whole thing was discussed, it was agreed that all those who wanted to put on their buttons, they could put them on, but it was still up to the volunteering of the individual, and I was one who volunteered to put them on. It was not a blanket decision by everybody there, that they should put on buttons, but it was up to the individual to do it, if he wanted to.

By Mr. Whittlesey:

Q. In other words, everybody who wanted to wear a steward's button could wear one? Is that right? A. Provided that he was a steward.

Q. About how many were there at the time that this decision was reached?

Mr. Rubenstein: I object to that question. It is not material to the issues to know how many were at the meeting. We are not discussing recognition or we are not asking for recognition.

Trial Examiner Hektoen: For what?

Mr. Rubenstein: Recognition of the union or for certification.

Trial Examiner Hektoen: I have already ruled on the question.

About how many people were there?

The Witness: About 30, I believe.

By Mr. Whittlesey:

Q. Prior to that time, Mr. Katz, had any of the other employees in the shop worn any other kind of buttons other than steward buttons, indicating their interest or affiliation in the CIO? A. May I have the question, please?

Trial Examiner Hektoen: Read the question, Mr. Reporter, please.

(Question read.)

The Witness: No.

By Mr. Whittlesey:

Q. You know Mr. Bobrow pretty well, don't you? A. Yes, sir.

Q. Are you sure that he never wore a CIO button prior to January 13th? A. Yes, I am sure he never wore one.

Q. Did you know Mr. Tomford? A. He never wore one.

Q. Are you sure? A. Yes, sir.

Q. CIO buttons were from time to time distributed in the shop before January 13th, were they not? A. No, sir; not that I know of.

Q. Mr. Katz, are you employed anywhere at the present time? A. Yes, I am.

Q. Where are you employed?

Mr. Rose: Objection.

Trial Examiner Hektoen: He may answer.

The Witness: I am working for the UAW, CIO, right now.

By Mr. Whittlesey:

Q. But you have no employment other than for the UAW, CIO? A. No.

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Robert Katz—For Board—Cross

Q. I believe that you testified on direct examination that you signed some kind of a union membership card or application card in January of 1942; is that right? A. That is right.

Mr. Whittlesey: Have you got that card here, Mr. Rose?

Mr. Rose: Yes, sir.

(Handing card to counsel.)

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By Mr. Whittlesey:

Q. Now after that time did you carry on any activities at Republic in behalf of the union? You did, did you not? A. Oh, yes.

Q. Can you tell us what those activities were? A: I spoke to a small number of fellows, a number of fellows in my department, and some others I knew personally from traveling home by car, who happened to work in other departments, about the union, and asked them to join, and gave them some application cards.

Q. What else? A. And I attended some union meetings, a number of union meetings.

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Q. What kind of organizing activities, if you can tell us? A. The attendance of union meetings, and speaking to fellows I knew at the shop about the union.

Q. You passed out leaflets from time to time; didn't you? A. No.

Q. I thought you testified that you did pass out leaflets at the Hempstead Turnpike; is that right?

Mr. Rose: I think the question had a time limitation on it originally, Mr. Whittlesey.

By Mr. Whittlesey:

Q. I mean after you joined the union in January 1942, and I am trying to find out, just in January, what you did in

the way of organizing activities? A. Just what I told you, but I did not pass out leaflets until a year later.

Q. When did you first pass out leaflets? A. The very first days of January. I don't remember the exact date.

Q. 1943? A. That is right.

Q. Now these activities which you have described went on pretty continuously from the time you joined the union until the time you were discharged? A. Well, for a number of months they went on. They went on continuously but in a very slow and careful fashion.

Q. But you talked with your fellow workers about it, did you not? A. To a certain number. I was very careful about whom I spoke to. 416

Q. About how many workers would you say that you talked to? A. I would say a couple of dozen.

Q. Fellows in your immediate shop? Is that right? A. Yes, sir.

Q. You talked to them during lunch hour? A. Yes, sir.

Q. And they would talk about the union with you, too, would they not? A. Yes.

Q. And sometimes when you were working together, too, didn't you? A. No.

Q. But quite a few of the men around there knew perfectly well, and came to know from your talks with them, that you were interested in unions, did they not? A. No. 417

Q. Those you talked to of course knew you were interested in the union, did they not? A. Yes.

Q. And there were quite a few of those, I understand? A. Well, it depends on what you call "quite a few."

Q. How many would you say? A. I don't know. I would say about somewhere between one dozen and two dozen, in that section that I spoke about unions to.

Q. What section? A. It was a part of 01 shop. I worked on a bench.

Q. How long were you in the 01 shop from the time you were employed? A. Will you please repeat the latter part of it?

Robert Katz—For Board—Cross

Q. How long were you in the 01 shop from the time you were first employed? A. I was in 01 shop for about six months.

Q. What did you do in 01 shop? A. What type of work?

Q. Yes. A. Bench work, sheet metal.

Q. Then you moved to what shop? 10 shop? A. 10 shop, that is right.

Q. What sort of work were you doing in 10 shop? A. Assembly work.

Q. I see. And you say you moved to 10 shop in about six months, and that would have been about July 1942 or June 1942; would it not? A. It was June 1942.

Q. I see. Now, you talked with your fellow workers there, didn't you? A. No.

Q. You did not say a word to them about your interest in unions? A. Not until October. I stopped talking about the union, I stopped talking about it in the way in which I was regularly trying to get fellows in. There were no regular conversations.

Q. What do you mean when you say "No regular conversations"? What other kinds? A. The only difference was after October, when we decided to re-start our drive, then I made it a point to approach people, and sound them out about the union, and how they felt about it. In that period of the whole summer I did not make that point.

Q. You mean your drive had not re-started during the summer of 1942? A. Not the summer but the fall.

Q. The re-start in the fall took place, but it was sort of inactive during the summer? A. That is right.

Q. In the fall what did you do, talk with your fellow employees in 10 shop? A. That is right.

Q. Can you describe in a little bit more detail just exactly what you did do in trying to interest them in the union? A. Will you please repeat the latter part of the question?

Mr. Whittlesey: Read the question, Mr. Reporter.

(Question read.)

The Witness: Fellows that I knew, certain of them I would pick out to approach carefully, and we talked about working conditions, and when you talk about "working conditions", it is easy to talk about the union.

By Mr. Whittlesey:

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Q. When would you talk to them? A. Lunch hours, mainly.

Q. Sometimes casually when you were working with them? A. No.

Q. You say "lunch hours" mainly. What other times? A. Before work and after work.

Q. Then you talked with quite a few during that time, didn't you? A. Quite a few over a period of time, and as time went on, more.

Q. I see. A. At first I approached certain people carefully, you know.

Q. Yes. By "quite a few", how many would you say? A. I don't understand the question completely because I do not know what time limit you are putting on it.

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Q. We will take this time from October, when you say you re-started your drive, up until the time you were discharged. A. I would say roughly between 50 and 100; somewhere around there.

Q. All in 10 shop? A. Well, most of them in 10 shop, but not all of them in 10 shop.

Q. Well, between 50 and 100 people you talked to about the union in 10 shop, between October and the middle of January, knew that you were interested in the union, did they not? A. That is right.

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Q. Now you were relating to us a conversation that you had with Mr. Bondy. I believe you said that was on January 12th. Do you recall that? A. That is right.

Q. I believe before you had this talk with Mr. Bondy you had some talk with your foreman? A. That is right.

Q. I don't think you told us who the foreman was? A. The foreman's name was Zilensky.

Q. That was Zilensky? A. Yes, sir.

Q. I see. Could you just go back and tell us first of the talk you had with Zilensky, and then take up the talk you had with Mr. Bondy? A. Zilensky came over to me suddenly and he said, "Where have you been?"

Q. What time of the day was this? A. I believe it was in the afternoon.

Q. Early or late in the afternoon? A. I don't know. I don't remember whether it was early or late. I think it was about two or three, but I just can't remember exactly.

Q. All right. Zilensky said, "Where have you been?" Is that right? A. That is right.

Q. Where had you been? A. Nowheres except right where I was working.

Q. What did you say to Zilensky? A. I said, "What do you mean?"

Q. Go on and tell us what happened. A. He said, "You have been wandering all over the place."

I said, "I don't know what you are talking about. I have been standing here doing my work."

He said, "Don't wander around."

I said, "How do you know that I have been wandering around?"

And he said, "I have got my reports", and he walked away.

Q. Just what sort of work were you on at that time, Mr. Katz? A. I was an assembler on a jig that was

assembling the main bulkhead. It is a part of the little group of assemblies connected with frame assemblies.

Q. You were on bulkhead work in that part of the shop?

A. Yes, most of the time, but sometimes I was assigned to another line of assembly work, another little assembly job right in the same section.

Q. Approximately how many men did Zilensky have under him in that sort of work there? A. Do you mean in the bulkheads or in the whole frame?

Q. In the bulkheads department, that you were working in. A. We had about six, I think.

Q. In other words, you were a group of six under Zilensky? A. Doing that particular job.

Q. Just that particular job? A. Yes, sir.

Q. That bulkhead department comprises more than just six people, does it not? A. What I meant by that was, that particular type of assembly. There were other bulkheads, but they are very simple affairs, and they used to build them up so fast, so they discontinued their production until they were needed again.

Me and another fellow and one, two, three, four girls were working with us, and we worked on that, and sometimes it would be another type of bulkhead, but, as I say, they were so simple that you could do the monthly quota in about a week, and they were discontinued until they were needed again.

Q. What I was trying to get at, for my own information, was to get some idea, if you had any, as to about how many people Zilensky had under him, along with you? A. Oh.

Q. Would you say 40 or 50? A. Do you mean in his whole section?

Q. Yes. A. Maybe even more; maybe 75. I could not say exactly.

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Q. Somewhere around less than 100, anyway? A. There might have been 100.

Q. Now I wish you would resume this conversation which you had with Mr. Zilensky, and take us right along from there. A. The conversation was finished when he walked away.

Q. Then what happened? A. I saw Mr. Bondy over there, and he happened to be just a few yards away from me, and I went over to him and started speaking to him.

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Q. All right. Tell us what you said and what he said. A. I pulled out my volunteer organizer's card and laid it right in front of him.

I said, "Mr. Bondy, I am a volunteer organizer for the UAW-CIO, and I am working with a number of other fellows here, trying to form a union, and I know I have a right to do so, and I intend to do so on my own time."

I said, "Mr. Zilensky has been bothering me, and has been hounding me, in fact, and I think he has been bothering me because he knows I am in a union, and I want it stopped, because I know nobody has the right to bother you because you are in a union."

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Q. Had you said anything to Zilensky about your being in the union at the time? A. No.

Q. You wanted Bondy to know definitely that you were in the union? Is that right? A. That is right.

Q. So that you would have been permitted to go ahead and organize without molestation?

Mr. Rubenstein: I object to that.

Mr. Whittlesey: I think that is what he testified to.

Mr. Rubenstein: I object to it as calling for a conclusion. He simply told Bondy that he felt he was being hounded by Zilensky.

Mr. Rose: I join in that objection.

Trial Examiner Hektoen: Read the question, please, Mr. Reporter.

(Question read.)

Trial Examiner Hektoen: If you add "Zilensky asked those questions", then it would be all right.

Mr. Whittlesey: I previously asked him if he had told Zilensky he was a member of the union, and he said he had not, and now he testified that he wanted Bondy to know he was a member of the union, and I think he said something about the right to organize.

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Trial Examiner Hektoen: So that he can go ahead and do whatever he wants to, without molestation from Zilensky.

Mr. Whittlesey: I see what you mean. You are right, Mr. Examiner.

Trial Examiner Hektoen: All right.

Mr. Whittlesey: Put that on the end of the question.

Trial Examiner Hektoen: You may answer the question.

The Witness: That is right. I just did not want the guy to be bothering me.

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By Mr. Whittlesey:

Q. Now I think you used the phrase that Zilensky was "hounding" you. Is that right? A. That is right.

Q. Were you referring just to this talk which you had that day with Zilensky? A. Yes, sir.

Q. When you said Zilensky hounded you, when you talked to Bondy you were referring just to that one talk you had with Zilensky, and just a little prior to that? Is that right? A. I also based it on my experience with

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Zilensky, my opinion of what kind of a guy I thought he was, because I know when I am being hounded.

Q. When you said "hounded" you were referring to that talk you had had with Zilensky? Tell me yes or no about that. A. I was referring to that talk in particular.

Q. You were referring to that? A. But I also based it on my acquaintanceship with him.

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Q. What did Bondy say? A. He said that he did not know that I was in the union, and that he was very surprised, and he admitted that I had a right to do this, and nobody would bother me.

Q. You talked with him further, didn't you? A. He went away and then he came back a few minutes later, a very short time, and he said, "This is off the record, but I would like to speak to you about the union."

Q. Go ahead. A. He said, "What do you expect to get out of a union? What can a union do during war time?"

I pointed out that the union during war time can do a lot of things. I said, "By establishing labor-management committees they can help production."

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I said, "If the union were formed, it would raise the morale of the employees in the plant", and I pointed out a number of grievances, and I pointed out something like a subway rush, and I said the company was not doing anything about it, but a union representing a lot of workers could do something. Then I pointed out inequality of wages, and I pointed out the fact that the union had contributed one hundred million dollars in War Bonds and bought two battleships, something which had just been told me a day before.

These were a number of the things that I pointed out on that Saturday morning, and then he asked the question, "I hear that at Brewsters, where there is a union, production is not up to par."

I said, "In that particular case it is the fault of management."

Q. What else was said? A. Then I pointed out a grievance.

Q. Tell us about it. A. One particular grievance which I stated happened to me more than once.

Q. What? A. I said that it is the practice when they want you to work Sunday, Saturday afternoon sometimes as late as 4:25 they suddenly come around and say "You are working tomorrow."

I said, "That should be given up because it is no consideration of the employees."

Q. Yes. A. He said he did not understand it, and he had definitely given the orders, starting a short while ago, that if anyone were going in on Sunday, "you will be notified on Thursday."

I said, "Mr. Bondy, I didn't know about that. I am glad to hear it", and then he walked away.

Q. That is all the talk you had with Bondy? A. Yes, sir.

Q. Now this last grievance you are talking about, with regard to this notification for Sunday work, you had some further talk, I believe you testified, the next day with Doglione, didn't you? A. That is right.

Q. What happened about that grievance in your talk with Doglione? Will you tell us? A. When I was called into the office he said, "There are a number of complaints against you. I hear you want a special day off, Thursday instead of Sunday", and I told him that he was misinformed, that I did not want that day off, and it strikes me funny because I never heard of anybody who wanted to be off on Thursday and not Sunday, and it was a very unusual thing, and it struck me at that particular moment, and I told him that I had had a conversation with Bondy, and that I asked him about this thing, and he said we were to be notified Thursday, and I told the lead man about it, Eddie Metzger, and he said he would do it in the future.

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442 Q. You got that all worked out satisfactory with Doglione, didn't you? A. Well—

Q. You can answer yes or no, can't you? A. I can't.

Q. He helped you to work it out, did he not? A. I wouldn't say that he did that, either.

Q. I think you testified on direct examination that after you brought it up with him he said, "Let's get this straightened out with your foreman."

443 Didn't he say that? A. Well, when he said that, I believe he wanted to straighten the thing out, and others along with it.

Q. By "the thing", you mean the Sunday matter? A. Yes.

Q. You got it straightened out, didn't you? A. The next week it worked out all right, but there was no formal discussion with the foreman having it straightened out.

Q. But it got straightened out? A. The next week it was straightened out. I did get proper notification.

Q. This talk which you had with Doglione on January 13th, I believe you told us— A. That is right.

Q. (Continuing) —that was not the first time you had had a conversation with him, was it? A. Yes, sir.

444 Q. Do you recall having had a talk with him sometime before Christmas? A. Sometime before Christmas?

Q. That is right. A. No.

Q. About keeping up the production? A. About keeping up the production?

— Q. That is right. A. No, I don't recall that.

Q. You don't recall him speaking to you about that at that time, do you? A. No.

Q. Did your foreman have any discussion with you a little while before Christmas about keeping up the production? A. With me?

Q. Yes. A. We had a conversation concerning my work in the department, at one time, me and my foreman.

Q. Who was your foreman then? A. Zilensky.

Q. Zilensky. What did he say? A. He said that I was an erratic worker.

Q. What more did he say? Just that? A. In that particular conversation he pointed out—

Mr. Rubenstein: Wait a minute. I would like to enter an objection at this time. The company's answer does not say that the man was discharged for inefficiency, and I do not see where it is proper cross examination, and if it is a defense of the company, it is not given in their answer, so far as I can see, and I do not see what relevancy it has on the entire matter here.

Mr. Whittlesey: Do you wish me to say something on that?

Trial Examiner Hektoen: Yes, sir.

Mr. Whittlesey: The reason is this—

This man has testified to a rather peremptory discharge, as he said it, in January, by Dogliene, allegedly for not being a good worker, and has told us a great deal about how good a worker he was and all that.

I wish to establish that that discharge occurred at that time to which he testified, but it did not stem just from that particular instance but went back further and there had been previous discussions with this man about his work, and I am going back to that.

Mr. Rubenstein: The company's defense is not that he was discharged for any other reason except violating company rules. They have filed their answer, and unless they amend their answer, it is not in it, and I do not see how they can bring in any new defense.

Trial Examiner Hektoen: I will let him complete his answer.

Mr. Rubenstein: Exception.

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Trial Examiner Hektoen: Read the question, please, Mr. Reporter.

(Question read.)

The Witness: In that conversation?

By Mr. Whittlesey:

Q. Yes, sir. A. That particular day he claimed that I did not do as much work as I should. He said, "You only did 15 parts."

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I said, "Mr. Zilensky, I did 50 parts."

He said, that my records would not show it. I said, "Mr. Zilensky, I am supposed to work, and I am not the stock chaser, I have got proof, I have got a girl who worked with me, and I did 50 parts, and the day before you said the job could be cut down from four hours to two hours, and you said you would come around, but you never came around," and I said, "I wish you would back up what you say, Mr. Zilensky," and he was very angry and walked away.

Q. Do you recall having a talk sometime around Christmas, or around the first of the year, with Doglione, about keeping at your work?

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Mr. Rubenstein: Same objection.

Trial Examiner Hektoen: Same ruling.

The Witness: No.

By Mr. Whittlesey:

Q. Or with Zilensky? A. I recall having one conversation with Zilensky, and that was the conversation.

Q. The one you just told me? I am asking you if you had one subsequently and after that? A. That is the only conversation I had with him about production. I honestly can't remember whether it took place before Christmas or after Christmas.

Q. You have spoken about a raise that you got on January 2nd of 10 cents an hour. A. That is right.

Q. That raise you requested yourself, didn't you? A. That is right.

Q. You took it up with Mr. Bondy and he gave it to you? A. Yes, sir.

Q. On January 13 you told us about some talk you had with Mr. Doglione? A. That is right.

Q. Didn't you have two talks with him that day? A. Two talks?

Q. Yes. A. On January 13? I only remember one talk with him in the office.

Q. Do you recall that morning having first that talk with Stanley Cole about your work and being around the shop? A. Stanley who?

Q. Stanley Cole, one of the foremen. A. I don't recall whether I had a talk with Stanley. There is a foreman whom I call Stanley. I don't know whether his last name is Cole.

Q. Well, did you have a talk with him that morning? A. I don't remember whether I did or didn't.

Q. Do you recall talking with Doglione that morning about doing the work properly? A. Yes, but I was called into Doglione's office and we had a conversation.

Q. The morning of January 13? A. I don't remember whether it was in the morning or not.

Q. You are sure you only had one talk with him that day? Didn't you talk with him in the morning and also in the afternoon? A. No, I just had one talk with him.

Q. You are sure he said nothing to you about walking around the shop on the morning of January 13? A. Mr. Doglione?

Q. That is right. A. No, I don't remember that.

Q. Weren't you down in 01 shop in the early part of the morning? A. Not that I remember.

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Q. You have no recollection of that at all? A. No, not that I remember.

Q. Or being reprimanded for that? A. No.

Q. You have no recollection of Doglione coming up to you in the afternoon of January 13 at your bench and talking with you? A. No.

Q. You don't recollect that he discharged you at your bench that afternoon? A. It wasn't on January 13, it was on January 14 that he discharged me, not the 13th.

Q. You are perfectly sure? A. Yes.

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Q. You are sure you had no talk with Mr. Lasker on January 13? A. No, it was the 14th, it was on a Thursday, the day after our Wednesday morning when we had meeting buttons on.

Q. You are positive you put the buttons on on the 14th, aren't you? A. Yes.

Q. There is no question in your mind about that whatever? A. No.

Q. Mr. Katz, before you were employed by Republic, where had you been employed? A. I had various jobs.

Q. Well, just tell us.

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Mr. Rubenstein: I object to that as being immaterial and irrelevant.

Trial Examiner Hektoen: He may answer.

Mr. Rubenstein: Exception.

Trial Examiner Hektoen: What was the job you had before you came with Republic?

The Witness: I think I worked about a week in a steel outfit, but that was just a temporary job.

Q. Do you remember its name? A. I worked there less than a week.

Q. Then take us back just before that week. Where did you work before that?

The Witness: To tell you the truth, I can't remember the job before that. I had a period of a lot

of unemployment in jobs. That is about two or three years ago that I worked on another job more or less regularly, so I can't remember the last job I had.

By Mr. Whittlesey:

Q. You don't mean to say you don't have any recollection of where you were last regularly employed before you came to work for Republic? A. At this particular moment I find it hard to remember.

Q. Well, I will tell you. I want to get the facts, that is all. Suppose you take a look at your application sheet and tell me from that.

Trial Examiner Hektoen: That is Board's Exhibit No. 3 for identification?

Mr. Whittlesey: I don't think it is for identification. It is in evidence.

Mr. Rose: None of them have been offered.

Mr. Rubenstein: It has been marked for identification.

Trial Examiner Hektoen: I wanted to make sure you were referring to the same thing.

The Witness: That was the last job that I remember I worked for a brokerage house and it was a winter job and it happened to be situated down in Florida. Then after that I was unemployed for quite a bit. I may have had some temporary jobs in the summer.

By Mr. Whittlesey:

Q. Prior to that you had some industrial employment, didn't you, the Eastern State Carbon Corporation? A. That was a long time ago.

Q. I just wanted to ask you, Mr. Katz, whether in any

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of those previous employments you had been a union member.

The Witness: May I look at that sheet again?
No, I never was a union member in any other place I worked.

By Mr. Whittlesey:

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Q. I believe, Mr. Katz, that you testified on direct that you were a steward for shop 10; is that right? A. That is right.

Q. And that there was no other steward in that shop in shop 10? A. There was another fellow who wore a steward button who happened to work in 10.

Q. Who was he? A. A fellow named Leo Rosenkrantz, but he was originally from 40 shop and he had been elected to be steward in that shop, and then he got transferred and kept his button on.

Q. So you had two people wearing steward's buttons in shop 10? A. That is right.

Q. When was he transferred over, do you know? A. I don't remember exactly when.

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Q. Had he been wearing his button before he came over? A. No.

Q. I believe you told us that January 14 was the first day that anybody wore any buttons. Right? A. Yes.

Q. And any steward's buttons? A. Yes.

Q. Now I think you also said that you were a steward for more than 10 shop? A. Well, my main job as steward was 10, but since the stewards at this particular stage had the job of helping to build the union in the shop, to help coordinate the union activities, talk about the problems all over, so during lunch hour if we met people from other shops who were interested, we would help them along, so in that sense I meant on a plant-wide basis.

Q. You were sort of steward representing more than 10

shop? I wanted to get it clear. A. Mainly 10, but we weren't so mechanical and narrow that we just restricted ourselves to our own department. After all the union is for everybody and not just for 10 shop.

Q. You have heard that term "steward" before many times, haven't you? A. Yes.

Q. And stewards are nothing unusual, are they? A. For a union, they aren't.

Q. Nothing unusual in union shops, are they? A. Well, as far as I know there isn't.

Q. What does a steward generally do in a union shop?

The Witness: I feel that I can give a general answer, but that I can't give specifically a detailed answer.

By Mr. Whittlesey:

Q. That is all right. Give us a start. A. You mean a steward in a shop where there is a union certified as the collective bargaining agent for everybody in the plant?

Q. Let's take that, then. A. Well, he represents a certain number of men in his sectional department. However, the union structure is organized. He goes about informing them about all union activities. He goes about explaining the union program. He goes about taking up union grievances.

Q. He is a sort of a go-between the men and their immediate supervisors; isn't he? A. Well, on the question of grievances, he represents the men in settling the matter with any particular immediate supervisors around, like lead men or a foreman and so on.

Q. They are supposed to come to him, the men in his part of the shop, or they do come to him, don't they, and then he takes their grievances up with the foreman? A. They should if they are good union men, if they are smart.

Q. Well, that is the way a steward is supposed to work

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in a union shop, isn't it? A. Well, if the union hasn't got 100 per cent organization in the plant, they should always try to have that. He should still get the rest of the people in the plant into the union. That is also his function.

By Mr. Whittlesey:

Q. What are your functions as steward here? A. My function mainly was to help our organization grow, to get more members in, build the union.

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Q. That was all your function? A. As I understood it, if there was any possibility of taking up grievances, we would do so, if you were allowed to do so, if you could get some results from the management.

Q. Did you take up any grievances? A. No.

Q. At any time? A. No.

Q. Did you talk to any of the employees, the other employees as to what you were as a steward? A. Of course.

Q. What did you tell them? A. I told them it was my responsibility mainly for shop 10 to build a union here.

Q. Did you tell them you would take up grievances for them? A. I didn't mention that most of the time.

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Q. Well, did you mention it any of the time?

Mr. Rose: I will object to that as immaterial and irrelevant.

Trial Examiner Hektoen: He may answer.

The Witness: Yes, a few times.

By Mr. Whittlesey:

Q. Can you recall what you said? A. Well, I did explain to a couple of fellows who were active that a union was an organization that fights for the interests of its people, and that if we had any possibilities of adjusting any grievances now, that we would do so.

Q. You were the fellows who adjust grievances for the management? A. I implied I was ready to go up.

Q. But you didn't address any grievances? A. No.

Q. Are you familiar with the Aircraft Voice? A. The what?

Q. A newspaper entitled "The Aircraft Voice"? A. I never heard of that paper before.

Q. You never even read it? A. Not that I remember.

Q. Does that refresh your recollection? Have you ever seen the "Aircraft Voice"? A. Oh, yes, but the name I didn't remember.

Mr. Whittlesey: I would like to have this photostat; two sheets of paper, entitled "Aircraft Voice" 470
dated February 1943 marked for identification.

(Thereupon the documents above referred to were marked as Respondent's Exhibit No. 2 for Identification.)

Mr. Rose: Mr. Whittlesey, do you have available the entire issue?

Mr. Whittlesey: Well, I don't know that I have it right at the minute, but I am sure I can find it.

By Mr. Whittlesey:

Q. I call your attention— 471

Mr. Rubenstein: What date is that?

Mr. Whittlesey: It just says "February, Volume 1, No. 7".

By Mr. Whittlesey:

Q. There is an article in this Exhibit 2 for identification entitled "Local 661 files charges", and I wish you would read that article, both on the first page and where it continues over on the second page.

(Document handed to witness.)

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Q. Did you, yourself have anything to do with the publication of that paper? A. No.

Mr. Rubenstein: Is this the middle column you asked him to read?

Mr. Whittlesey: Yes.

By Mr. Whittlesey:

Q. This paper, the "Aircraft Voice" is the paper of Local 661, UAW-CIO, right? A. As far as I know it is.

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Q. That was the local to which, and is the local to which, you belong? A. No, it is not.

Q. To what local do you belong? A. I don't belong to any local.

Q. What do you belong to? A. To the Republic Organizing Committee.

Q. Of what? A. Of the UAW-CIO.

Q. Did you ever pass out this paper yourself? I believe you told us about passing out leaflets, and things, during January. Did you ever pass out issues of this paper? A. No.

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Q. Now, this article I call your attention to, refers to a discharge of yourself, Mr. Bobrow, Mr. Kahler, and Mr. Stone, does it not? A. Yes.

Q. I call your attention to a statement at the end of that article "All Four Discharged Men were Active Stewards and were Successfully Handling Grievances, Even though the Union had not Yet Won Recognition from the Company".

Now, that wasn't a correct statement as to your activities, was it?

The Witness: Well, part of the statement is true. I was active in the sense that I described, but I myself didn't handle any grievances.

By Mr. Whittlesey:

Q. In other words, as far as that is concerned, the statement would not be true? A. Part of it wouldn't be true.

Q. So far as the purport which states that you were actively handling grievances, the statement would not be true, would it? A. That part, no.

Q. I believe you have told us about a meeting that you had with Mr. Lasker in his office at 4:30 o'clock in the afternoon. You said that was on January 14? A. That is right.

Q. I wish you would tell me again your recollection of just what occurred at that meeting and what was said. A. Mr. Lasker spoke to me and said that he knew I was an old employee there in the shop; that he had heard that there had been some trouble concerning myself and that I was to be discharged, but that the company had a policy of not wishing to discharge people who had long employment records there, so he wanted to talk over my case.

He said that I was being charged with loafing, and I denied it. Then Mr. Bruno cited the fact that I drove two holes in 20 minutes, and I denied that I had been loafing again and that I drilled two holes in 20 minutes.

I told him that I didn't know just how many holes I drilled or what I had done. I just don't clock myself, that I had been working steadily right along.

And then I told Mr. Lasker that the whole trouble had arisen because of the fact that I was a union member; that I had told him I was in a union, I was going to organize, and that they were bothering me, discriminating against me.

So he said that the reason was for loafing and he said on the question of union activities "You cannot solicit on company property. You cannot pass around application cards."

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Q. Did you ask him about soliciting at that meeting?

A. About soliciting?

Q. Yes. A. I don't know whether I put the question with the word "soliciting".

Q. Didn't you bring it out? A. What I did bring out was the question of my being able to talk to people about the union. That is what I brought up. As to just what word was used that started the conversation between Lasker and myself on the company ruling on soliciting, I don't remember.

479 Q. This was a perfectly friendly conversation, wasn't it? A. It was friendly but Lasker was business like.

Q. It ended in your being reinstated, didn't it? A. Yes.

Q. Do you recall stating to Lasker at that time that you would get down to brass tacks? A. I told him that I had always worked on my job and that I would continue to do so as in the past.

Q. Tell us the rest of that conversation. A. He told me that on the company rule on soliciting I was not allowed to solicit anything, not allowed to pass out cards and not allowed to speak to anybody.

480 "By the way," he said, "I have seen you wearing a steward's button. It is the only one I have seen around. It is perfectly all right for you to wear any kind of a CIO button, any number of them you walk in with."

Q. Any number of CIO buttons? A. And any kind of a CIO button. Then I said "Let me get this straight, Mr. Lasker. I want to ask you a question. Suppose I am sitting and eating my lunch and a friend of mine comes over and says, 'Hello Bob, how is the union going', what am I supposed to say to him?"

Mr. Lasker replied "You are supposed to say just this: 'I am sorry, I cannot speak to you about the union, we are on company property. If you want to talk about the union

please meet me outside the company property.' " He said it in almost exactly those words.

Then I said, "O.K. I can see how you feel."

He said, "Well, we are going to reinstate you with the events of the past few days forgotten. Go back to your job."

I told him I would.

Q. That was on January 14. Right? A. That is right.

Q. The first day you wore your steward's button? A. That is right.

Q. Now, I believe you told us about a talk you had with Mr. Doglione later on when he said something to you about having gone to see Mr. Lasker; is that right, several days later? A. Yes. I had a talk with him on the next day in the afternoon, January 15.

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Q. January 15? You hadn't had any talk with Doglione on the 14th, had you? A. Yes, the 14th was the day I was fired. He came down to me and told me I was fired and then we had a talk down there.

Q. Do you recall whether he made out a release slip for you at the time? A. The 14th?

Q. Yes. A. No, I didn't see a release slip but he told me he was going to give me a release.

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Q. Then you had a talk with Doglione some days after that, didn't you? A. Well, I had a talk with him on Thursday and then on the following day.

Q. After you were reinstated, didn't you? A. Yes, on Friday, the day after I was reinstated.

Q. What was that talk about? A. Well, he called me into the office. He pointed at me and said, "What, are you out to get me?"

I said, "What do you mean?"

He said, "Are you trying to break all the company rules around here?"

I said, "What are you talking about?"

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He said, "You went up to see Lasker this morning twice. Why didn't you come to me first? You are supposed to go to your immediate supervisor and then to me and go through the whole procedure."

I said, "Look, Mr. Doglione, I went up and got a pass from the timekeeper. I went over and had Zilensky sign it. He knew about it. I did it twice."

Q. The pass which you got from Zilensky, you say? A. What?

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Q. You say you got a pass from Zilensky? A. I got a pass from the timekeeper which Zilensky signed.

Q. That pass reads for you to see whom? A. The personnel office to see Mr. Lasker.

Q. That is just exactly what the pass said? A. I don't know what the pass said but when I got the pass I told him I was going to see Mr. Lasker.

Q. But you had a pass up to Lasker's office? A. Yes.

Q. Entitling you to go directly to Lasker's office? A. That is right.

Q. Are you sure it wasn't—strike that. You say you got that from Mr. Zilensky. A. That is right.

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Q. What did you want to see Mr. Lasker about at that time? A. Well, in the conversation before on the question of company rules I wanted to discuss further the question of passing out union cards, in other words, the whole question of soliciting, you see, the whole dispute as to whether passing out a union card was soliciting. I wanted to discuss it and see if we could arrive at an agreement.

That is the reason I went up.

Q. Did you explain that to Mr. Doglione in this talk you were having with him? That was why you wanted to see Mr. Lasker? A. I don't think I got a chance to, he flew at me right away.

Q. You didn't explain to him what you wanted to see Lasker about? A. I told him that I wanted to see Mr. Lasker.

Q. And you didn't see Lasker that time, did you? A. That is right.

Q. You didn't see him? A. No.

Q. And is it true that this talk with Doglione, Doglione then arranged for you to see Lasker, didn't he? A. I don't know.

Q. Didn't you ask him to, and didn't he say that he would? A. I just told him what I wanted to do in the past and I didn't ask him at that particular time for me to try to see Mr. Lasker.

Q. Didn't he offer to arrange for you? A. No.

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Q. You are perfectly sure? A. Perfectly sure.

Q. You were telling us something about some efforts you had made to solicit for blood donations to the Red Cross, Mr. Katz. About when did that activity take place? A. I would say the end of June, somewhere in June. Maybe it lapped over into July.

Q. And when you brought to Mr. Hargrave's attention that you had checked these names I gather that is what you had checked, hadn't you? A. That is right.

Q. He told you that the activity although very worthy could not go on, is that right? A. No, he didn't say that.

Q. What did he say? A. First I brought it to the attention of another company official.

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Q. Who is that? A. A man who is in the public relations office whose name I understood to be Mr. Wilson. I am not sure of his name.

Q. What did you tell him? A. I brought the list in. I showed it to him and he thought it was a wonderful thing.

Q. What is this list you are talking about? A. The list of names.

Q. Where did you get the list of names? A. We went around and got people to make pledges by signing their names.

Q. You mean you went around to people and when a

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person said he would do this you put his name down? A. He signed his own name.

Q. After you had asked him whether he would give blood? If he said "Yes" you wrote his name? You took this list of names in to whom? A. In to this person up in the office building.

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Q. What did you say to him? A. I told him what we were trying to do. I showed him a list of names. I asked him for cooperation with the company and he said it was a wonderful thing and that the company would be vey glad to cooperate.

We did get cooperation from a clerical worker, the names were retyped over, he kept the lists and he said, "How about some newspaper publicity?"

He said, "Gentlemen, it is too bad that you came in a day or so late, otherwise we would have given you a spread on the front page. I will tell you what I will do, I will get it on the front page."

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Sure enough two days later the paper came out and right on the front page in the little box, pretty fair size, is the story about the Red Cross drive with my name mentioned, pointing out that Republic workers besides giving bonds are also doing this.

Q. Then what happened? A. Well, I continued doing it for a number of days with a number of other fellows. We brought up another list. He was supposed to get in touch with this and I was told by his secretary to get in touch with Mr. Hargrave. I saw Mr. Hargrave in that same period. I don't know whether it was that same day or a few days later. I saw him and we discussed the matter. I asked specifically for cooperation on the part of the company for setting up the machinery to take the blood, and he said he could not offer the hospital facilities.

He also pointed out that while it was commendable that in his own personal opinion there were a lot of people who

got sick and it wasn't worth the effort even if a lot of blood was given.

Q. Didn't he point out, too, that it was better for people to make their own decisions on that and handle it locally rather than from the factory? A. He pointed out that for the present it would be advisable to work locally in his opinion.

Q. And to leave people alone and not bother them about that? A. He said it was up to me, I could do it on my own. I could go around and see them from time to time, drop in, but I was discouraged in the whole thing because I didn't think we could do anything on a individual scale, I thought the whole thing could be put over on a factory scale.

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Q. I believe you were talking about some-baseball teams you talked to Mr. Ainsmith about, Mr. Katz. What did he tell you you could do as far as that ball team was concerned? A. We had formed a team and he encouraged me to have another team formed if possible.

Q. What was this, a company team? A. Well, these were teams that were encouraged by the company to indulge in sports activities.

Q. This team you are talking about, I want to know about this team. A. Well, it was a group of fellows who got together and wanted to play soft ball.

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Q. In your section? A. That is right.

Q. You had gotten together, hadn't you? A. Yes.

Q. And you wanted to get some equipment; is that right? A. That is right.

Q. And he said that he would get you the equipment, didn't he? A. He also said that he would book games for us with other teams, and he also encouraged me to go out and have other fellows form other teams if they wanted to do so.

Q. Go out and start forming ball teams all over the plant? A. No, I just transferred into another department,

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so I spoke to a couple of guys about it, said I didn't make a point of doing it.

Q. You had a ball team of your own, didn't you? A. Yes.

Q. You weren't in the ball team organizing business, were you? A. No.

Q. You had really come to get some stuff for your own ball team, your own department, wasn't that it? A. I came to get cooperation with him.

Q. And you got cooperation, didn't you? A. Yes.

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Q. This Firemen's dance, do you know whether that dance ever came off? A. No, I didn't attend, so I don't know.

Q. You said, Mr. Katz, I think on your direct, that you were elected a steward for shop 10. Is that right? A. Yes.

Q. When were you elected by the men in shop 10? A. Well, some of the people at the meeting were from shop 10.

Q. How many from shop 10 at the meeting? A. Just a small number.

Q. Five? A. About a half dozen.

Q. How large is shop 10? A. It is quite a large shop. I don't know. As a rough guess I would say a thousand

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are in it in the day time.

Mr. Whittlesey: Those are all the questions I have now.

Mr. Rose: I have a few questions.

Redirect examination by Mr. Rose:

Q. As I understand your testimony, Mr. Katz, the first time there was any decision to wear buttons was at that meeting of January 13, 1943; is that right? A. That is right.

Q. Now, on the morning of January 12th when you say foreman Zilensky spoke to you about wandering around, had you been wandering around? A. No, sir.

Q. Had you left your work? A. No, sir.

Q. When you did hand out union application cards, when did you do it? A. I did it before work, lunch hour, and after work.

Q. Did you ever do any union activity on company time?

A. Never.

Mr. Rose: No further questions.

Mr. Rubenstein: I have a couple of questions.

Recross examination by Mr. Rubenstein:

Q. What relation did Zilensky have to you? Was he your immediate supervisor? A. He was my immediate foreman.

Q. Your immediate foreman? A. Yes.

Q. And he was supervising the section where you were working, is that right? A. Yes.

Q. At lunch time did you people remain in your sections where you worked? A. Sometimes I ate lunch at my bench; sometimes I was in the smoking room right near where I worked. Usually around where I worked.

Q. And usually Mr. Zilensky was also around even at lunch time in that section? A. I saw him around a few times.

Q. At lunch time? A. Yes.

Q. And during lunch time was the time that you usually discussed with your employees union activities. A. Yes, sir.

Q. And he was around the neighborhood where you were discussing this with shop employees? A. There were times when he was there.

Q. There were times? A. Yes.

Q. And around that time from about December, the early part of December 1942 until your discharge, was there

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an increase of activity in the shop, union activity? A. Yes, more people were joining at a quicker rate.

Q. More people were joining and signing up, and there was more talk generally in the shop about the formation of a union; is that right? A. Well, as I understood and heard, the talk was beginning to grow quite a bit.

Q. And a lot of people spoke about it; is that right? A. Oh, yes.

Q. Now, there were a lot of questions about the stewards in union shops. Republic Aviation Corporation is not a union shop, is it? A. No.

Q. In fact, the union is not recognized there? A. No.

Q. Now, do you know the difference between a steward in the union shop and a steward in a non-union shop like Republic Aviation? A. Well, as far as I know the difference in a union shop is that if there is a contract which stipulates grievance machinery the steward must handle grievances, must try to adjust them.

Q. In a non-union shop, what are the duties of a steward? A. As far as I know it is mainly to go out and to bring more members into the union, build a union.

Q. Now, the steward, that is a designation of an office, isn't it? A. My understanding is that it is a designation of the office of a fellow elected to represent a certain group or number of members in that particular section.

Q. And the members that belong to the union; is that right? A. That is right.

Q. So that when a steward is elected in a non-union shop it simply means that he is elected by a certain group of that shop that belong to the union; is that right? A. That is right.

Q. That is what happened in your case? A. Yes.

Q. And he is an officer of a certain group, the same way as, let us say, the secretary is an officer of the entire union; is that right? A. That is right.

Q. And when he puts on a badge it is simply a designation that he was elected by his members of that group; is that right? A. That is the way I understood it and explained it.

Q. And the steward's button is a designation that that man was so elected; is that right? A. That is the way I understood it.

Q. Now, you were employed on January 13, 1941? A. Yes, sir.

Q. Do you know whether at that time the company had the automatic periodic raises installed? A. No, they did not. 506

Q. At that time raises were given on merit; is that right? A. That is right.

Q. Now, on April 13, 1941 you were given a five cent raise? A. I got a raise about three months after I began working.

Q. That was a merit raise? A. That is right.

Q. I show you Board's Exhibit 3-A for identification and ask you to read the second line under the raises. A. The second line says "Warrants increase."

Q. And that was on the line of April 13th, '41. Now I show you the line number 35 on Exhibit 3-A. Will you read that? A. "Ability warrants increase." 507

Q. And will you read all the line subsequent thereto and the dates when those lines were entered? A. Line 36: "General raise."

Q. What is the date of that? A. 7-27-41.

Q. And the next line? A. Do you mean the lines in connection with the raises?

Q. That is right. A. Line 39, 1-18-42. No, I made a mistake over there. It is line 40, April 11, 1942.

Trial Examiner Hektoen: No comment.

The Witness: January 2nd, 1943: "Raise to 85 cents an hour", a ten cents raise.

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*Robert Katz—For Board—Recross**By Mr. Rubenstein:*

Q. Now, before January 2, 1943 you were getting 75 cents; is that right? A. Yes.

Q. And on January 2nd of 1943 you were given a ten cent increase? A. That is right.

Q. Now, there was some question as to whether or not you had taken this question of an increase up with your foreman. You did ask for an increase? A. Yes, I asked my supervisor for an increase.

509 Q. Is it unusual for an employee in Republic Aviation to have to ask for an increase if he feels he is entitled to it?

Mr. Whittlesey: I object to that. We have a huge plant and this is only one man who is testifying.

Trial Examiner Hektoen: Will you read the question, please?

(Question read.)

Trial Examiner Hektoen: I will sustain the objection.

By Mr. Rubenstein:

510 Q. Did you have any hardship in getting the increase after you asked for it?

Mr. Whittlesey: I object to that too. He got it.

Trial Examiner Hektoen: Sustained as to form. He may say what took place or what he has to do.

By Mr. Rubenstein:

Q. When you asked for the increase what happened?
A. Well, I asked Mr. Bondy for the increase. I told him about my record and he agreed to put me in for a ten cent raise.

Mr. Rubenstein: That is all.

Mr. Whittlesey: I may have some further re-direct.

Trial Examiner Hektoen: You mean recross?

If you can finish with the witness now, I suppose it might be desirable.

Recross examination by Mr. Whittlesey:

Q. Did you get any instructions at the time you were elected as a steward as to what you were to do? A. It was mainly——

Q. What were those instructions?

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Mr. Rubenstein: He didn't answer whether he got instructions.

By Mr. Whittlesey:

Q. Did you get instructions? A. I wouldn't say that I got instructions. We just discussed what we should do. We discussed the improvement of the union.

Q. You got no instructions of any sort? A. No.

Q. Were you told what the duties of a steward were? A. No.

Q. You decided what were these duties you would do; is that right?

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Mr. Rose: What is the question?

(Question read.)

Mr. Rose: I object to the form and to the relevancy of the question.

Mr. Whittlesey: I will withdraw the question.

By Mr. Whittlesey:

Q. How had you decided what a steward would do? A. Oh, I had had discussions at the meetings with the director.

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of the drive, and when I say I didn't get instructions I don't mean he said one, two, three and four, but we did discuss the duties of what a steward was, and I had read about it.

By Mr. Whittlesey:

Q. As I understand it from your testimony yesterday, Mr. Katz, you testified that you were elected a shop-steward at this meeting on January 13th. Is that correct? A. Yes.

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Q. Were any notices of that meeting sent out?

Mr. Rubenstein: I object to that as irrelevant and immaterial and incompetent. It may be competent, but it is immaterial and irrelevant.

Mr. Whittlesey: I think, your Honor—

Trial Examiner Hektoen: Just a minute. You may answer if you know.

The Witness: I am really not sure whether they were or not.

By Mr. Whittlesey:

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Q. Now, I believe you testified that there were about 30 persons present at that meeting. Is that correct? A. Yes.

Q. Were you nominated a steward before you were elected?

Mr. Rose: Objection as immaterial and incompetent.

Trial Examiner Hektoen: He may answer.

The Witness: Yes.

By Mr. Whittlesey:

Q. And did all present participate in the election? A. Yes.

By Mr. Whittlesey:

Q. You were elected shop steward to represent just what?

Mr. Rose: Objection. That has been covered on cross examination.

Trial Examiner Hektoen: Well, it is department 10, or whatever it is, Mr. Whittlesey.

Mr. Whittlesey: I am not quite clear on that from what he said before.

Mr. Rose: I think it has been covered several times on cross examination.

Trial Examiner Hektoen: What did you represent?

The Witness: I represented 10 shop firstly.

By Mr. Whittlesey:

Q. And then anything beyond that? A. No, nothing beyond that, but I also understood my duty to be interested in helping other fellows in other shops to better build the union.

Q. To organize? A. That is right.

Q. Prior to the time you were elected shop steward I believe you said you were a member of the organizing committee; is that correct? A. That is right.

Q. And as a member of the organizing committee your duties were to do what in the plant? A. Build the union.

Q. Well, specifically to talk with employees; is that right? A. Well, in whatever way we saw fit to build the union.

Q. One of those duties was to talk with the employees about joining the union? A. Yes.

Q. To pass out union cards? A. Yes.

Q. To pass out handbills? A. Yes.

Q. Any other duties? A. Well, to attend all necessary

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meetings through any sub-committee set up to do any particular thing.

Q. When you were elected shop steward you received no additional duties, did you? A. Yes.

Q. What were they? A. Well, to mainly concentrate in that one particular section.

Q. Well, by "concentrate" exactly what do you mean, concentrate on what? A. On the workers in that department.

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Q. Concentrate on the workers? How do you mean, "concentrate on them", think about them? A. Not think about them but to think about ways and means of speeding up their interest into our union.

Q. In other words, to organize, is that right? A. That is right.

Q. That was your duty prior to the time you were shop steward, wasn't it, to organize? A. Yes.

Q. Your duties were exactly the same, were they not? A. They were developed to a higher point.

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Q. Will you tell me just how to a higher point? A. Well, to the point that I had to think in reference to departmental meetings. I had to think in reference to particular grievances and particular actions that took place in 10 shop.

Q. Did you hold departmental meetings after becoming a steward? A. We haven't held any departmental meetings.

Q. What do you mean, "think in reference to departmental meetings"? A. Just what I say.

Q. You mean think about having them? A. Plan them, too.

Q. Do you plan any? A. Well, I didn't specifically plan departmental meetings, but what I mean by planning, laying the ground work for such'a thing.

Q. Departmental meetings of the union members in the shop? A. That is right.

Q. In that department? A. That is right.

Q. After you became a steward, or prior to the time you became a steward, you were an organizer; right? A. A voluntary organization.

Q. And after you became a steward you were an organizer with a button on, correct? A. Yes, but elected for a designated job to represent a certain group of people who were already in.

Q. Represent them in what way?

Mr. Rose: I object to that as repetitious. It has been covered several times on cross.

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Trial Examiner Hektoen: I think it has been answered, Mr. Whittlesey, at almost complete length.

By Mr. Whittlesey:

Q. Well now, after January 13 were there among the employees at Republic Aviation members of the union who were also organizers besides yourself? A. Afterwards?

Q. Yes. A. I think so.

Q. Did all of them wear steward's buttons? A. Not that I know of.

Q. But some organizers wore steward's buttons, didn't they? A. That is right.

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Q. Some organizers did not wear steward's buttons? A. That is right.

Q. An organizer with a steward's button was a chief organizer, correct? A. He was what we call a steward.

Q. He was head of the organizers in that particular section, right? A. He represented all the men in his particular section.

Q. Your principal function as steward was to organize, right? A. That is right.

Q. And to confer with the other organizers who had not steward's button on, right? A. Well, not only the organ-

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izers who were active union people, but anybody in the union.

Q. But your duties were as an organizer with a steward's button, weren't they, to confer with the other organizers? A. That is right.

Q. You spoke about having shown a certain hand-bill to Mr. Doglione after that talk you had with him on January 13? A. Right.

Q. I ask you whether this is a copy of that hand-bill. A. Yes, I think so.

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Q. I believe you also testified that you distributed hand-bills during January outside the plant. A. Yes.

Q. Was this one of the hand-bills that you distributed? A. I think that is the one.

Q. This is the one you were distributing outside the plant? A. I think so. I am not positively sure but I think so.

Mr. Whittlesey: I would like to mark this as Respondent's Exhibit No. 3 for identification.

(Thereupon the document above referred to was marked as Respondent's Exhibit 3 for Identification.)

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By Mr. Whittlesey:

Q. What was the occasion, as you recall it, for showing this hand-bill to Mr. Doglione?

Mr. Rose: I object. It has been covered before, this whole conversation with Mr. Doglione has been gone into on cross examination in several aspects.

Trial Examiner Hektoen: Overruled. He may answer.

The Witness: Well, as I said before, when we started discussing grievances I pulled out a hand-bill and showed it to him, just like that.

By Mr. Whittlesey:

Q. You wished to represent to Mr. Doglione that you were interested in representing the union for the purposes of discussing grievances?

Mr. Rose: I object. The testimony is in the record. I object to counsel's attempted summary.

Trial Examiner Hektoen: Do you think it is inaccurate?

Mr. Rose: Well, I would rather that the testimony or the record spoke for itself. I don't see the purpose of the question, probing as to what this man was representing, the testimony as to what was said in the record already.

Trial Examiner Hektoen: Read the question.

(Question read.)

Mr. Rubenstein: I should like to join in the objection also on the further ground that this is calling for a conclusion by the witness as to a reason that is entirely inadmissible.

Mr. Rose: In addition to that, the whole conversation has been covered on cross examination.

Trial Examiner Hektoen: Is that what you told him?

(The Witness: Oh, no.

Trial Examiner Hektoen: All right.

By Mr. Whittlesey:

Q. What did you tell him?

Mr. Rose: Objection, repetitions.

Mr. Rubenstein: I join in the objection.

Trial Examiner Hektoen: What happened? Didn't counsel withdraw the question?

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Mr. Whittlesey: No, I haven't.

Trial Examiner Hektoen: What did you say?

Mr. Whittlesey: He said he didn't tell him that. I said "What did you tell him?"

Trial Examiner Hektoen: He may answer.

The Witness: I told him that our union desired a grievance machinery set up, but I didn't particularly represent myself. I just pulled out the leaflet as an illustration. That is all.

Mr. Whittlesey: I would like to offer this in evidence.

Mr. Rose: No objection.

Trial Examiner Hektoen: It may be admitted in evidence.

(Thereupon the document previously marked for identification as Respondent's Exhibit 3 was received in evidence.)

By Mr. Whittlesey:

Q. I believe you testified you were presently employed by the UAW-CIO; is that correct? A. I am sorry, I didn't hear you.

Mr. Whittlesey: Will you read the question?

(Question read.)

The Witness: That is correct.

By Mr. Whittlesey:

Q. Did your employment with the UAW-CIO start following your discharge from the Republic Aviation? A. No.

Q. Have you been employed by them since you left there? A. Yes.

Q. And you are still employed there? A. Yes.

Q. At what salary?

Mr. Rose: Objection as immaterial.

Trial Examiner Hektoen: Sustained.

Mr. Whittlesey: The only reason I am asking, if your Honor please, is that we have here an issue of wrongful discharge and reinstatement.

Trial Examiner Hektoen: If the reinstatement is ordered, that whole question of back pay and so forth will have to be gone into.

Mr. Whittlesey: That is all.

Mr. Rose: I have no further questions.

Recross examination by Mr. Rubenstein:

Q. This Respondent's Exhibit 3 contains a copy of a letter addressed by Charles H. Kerrigan, Regional Director, UAW-CIO to Republic Aviation Corporation; is that right?
A. Yes.

Q. You knew about that letter that was sent by Kerrigan to the company, which letter is being reproduced here? A. Yes.

Mr. Whittlesey: Do you want to offer that?

Mr. Rubenstein: Yes.

Mr. Whittlesey: No objection.

Mr. Rubenstein: I offer in evidence the letter marked as Board's Exhibit No. 9 for identification.

Mr. Rose: I, previously offered it but there had been an objection previously. Are you withdrawing your objection?

Mr. Whittlesey: That is right.

Trial Examiner Hektoen: Well, I dare say Board's Exhibit No. 9 may be admitted. How about Board's Exhibit No. 13?

Mr. Rose: You are withdrawing your objection to 13?

Mr. Whittlesey: I will withdraw that, too.

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Mr. Rose: I offer that.

Trial Examiner Hektoen: Are you offering Board's Exhibit No. 13 too?

Mr. Rose: Yes.

Trial Examiner Hektoen: Any objection?

Mr. Whittlesey: No objection.

Trial Examiner Hektoen: Very well. Both may be admitted.

(Thereupon the documents previously marked for identification as Board's Exhibits 9 and 13, respectively, were received in evidence.)

Mr. Rubenstein: That is all.

Mr. Rose: I have a few questions.

Redirect examination by Mr. Rose:

Q. Mr. Katz, I may have asked you this question this morning or yesterday afternoon, but, directing your attention to Board's Exhibit No. 14, was that the kind of union card you signed? A. No.

Q. Well, was it in any different kind of a union? A. Well, it was the same kind of a union card but the form was just a little bit different.

Q. I have shown you this card before. Is this the card you signed? A. Yes.

Mr. Rose: I will offer the card in evidence.

Mr. Whittlesey: No objection.

(Thereupon the card above referred to was marked as Board's Exhibit No. 16 and was received in evidence.)

By Mr. Rose:

Q. Now, in a conversation with Mr. Bondy reference was made to the Brewster plant. At that time insofar as

you know was the Brewster plant covered by a contract with the UAW-CIO? A. Yes.

Q. A union shop? A. Yes.

Q. You have also referred to a distribution of leaflets early in January. Was that January 1943? A. Yes.

Q. You also have testified concerning conversations with Mr. Bondy, Mr. Doglione, Mr. Lasker in January. That is January 1943? A. Yes.

Q. As I understand, only stewards wore the steward button; is that right? A. Yes.

Q. So that only voluntary organizers who were elected stewards wore the steward button; is that right? A. Yes. 542

Mr. Rose: That is all.

Trial Examiner Hektoen: Anything else?

Mr. Whittlesey: Nothing else.

Trial Examiner Hektoen: Just one question.

You spoke about dance tickets for the January 30, 1943 dance. Specifically that was for the Volunteer Firemen's Organization. You saw some being passed around in the plant, didn't you?

The Witness: Yes, I was approached by two fellows.

Trial Examiner Hektoen: You were approached? Did you buy a dance ticket, for instance? 543

The Witness: No, sir.

Trial Examiner Hektoen: Did you notice anybody buy a ticket?

The Witness: No.

Trial Examiner Hektoen: You didn't see any money change hands?

The Witness: No.

Trial Examiner Hektoen: That is all I have. Thank you.

(Witness excused.)

Mr. Rose: Mr. Bobrow.

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ROBERT BOBROW was called as a witness by and on behalf of the National Labor Relations Board and, being first duly sworn, was examined and testified as follows:

Trial Examiner Hektoen: What is your address?

The Witness: 43-12 Elbertson Street, Elmhurst, Long Island.

Direct examination by Mr. Rose:

Q. Did you work for Republic Aviation Corporation?

545 A. Yes.

Q. When did you start to work for that company? A. In April, 1942.

Q. In what department did you start? A. Maintenance.

Q. At what rate did you start? A. At the rate of 60 cents an hour.

Q. And until when did you work for the company? A. Until January 26, 1943.

Q. Were you discharged on that date? A. Yes, I was.

Q. In what department were you working at that time?

A. In the jig shop. That was part of the tool shop.

Q. And what was your rate at the time your employment ceased? A. 80 cents an hour.

546 Q. During your period of employment your rate had been increased up to what you last mentioned? A. Yes, it did.

Q. Did you sign an application for membership in the charging union? A. I signed an application for membership in the UAW-CIO.

Q. Do you remember when? A. Sometime shortly after my employment in Republic.

Q. I show you this card. Does that refresh your recollection as to the date? A. I think that date is accurate, April 27, 1942.

Q. And were you on any committees of the union? A. Yes, I was.

Q. Were you a member of the organizing committee?

A. Yes.

Q. Did you hold any special office in connection with the organizing committee? A. I am the chairman and was at that time of the organizing committee.

Q. When did you become a member of the organizing committee? A. At its inception in October 1942.

Q. Did you distribute the union leaflets? A. I did.

Q. Approximately when? A. In the first couple of weeks in January. I find it hard to place my finger upon the exact date.

Q. Well, approximately? A. Within the first couple of weeks of January.

Q. January of what year? A. 1943.

Q. And did you become a shop steward? A. Yes, I did.

Q. When did you become a shop steward? A. I was designated shop steward on January 13 at the meeting of the Republic Organizing Committee.

Q. In 1943? A. Yes.

Q. And for what department? A. I was designated shop steward covering the entire shop. The fact that I worked in 80 shop, which was the tool shop, made it convenient for me to work specifically among the workers of 80 shop.

Q. Did you wear a steward button? A. Yes, I did.

Q. When for the first time did you wear a steward button? A. On January 25, on a Monday, 1943.

Q. I show you Board's Exhibit No. 15 and ask you whether the steward button you wore was identical with the one I am showing you? A. To the best of my knowledge it was.

Q. And where did you wear the button? A. Pardon?

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Q. Where did you wear the button? A. On my outer clothing, that is shirt or sweater or whatever I happened to be wearing at the time.

Q. And did you wear it in the plant? A. Oh; yes.

Q. Near your company identification button? A. Yes.

Q. Where you wore it was it plainly visible? A. It was.

Q. You wore that for the first time on the 25th of January, 1943? A. That is correct.

Q. And did you wear it thereafter as long as your employment lasted? A. I did.

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Q. Who was your foreman on January 25? A. Stanley Nepsee.

Q. Did anything different happen on the first day you wore the button, January 25? A. I don't understand what you mean.

Mr. Rost: Withdraw the question.

By Mr. Rose:

Q. Did you get any work on the morning of January 25 from Mr. Nepsee? A. Yes, I did.

Q. Did he show you a diagram or a sketch? A. Yes, he did.

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Q. Tell us what happened. A. Well, I had been working on a job which I was finishing up from the previous day or the previous couple of days, and it was in its final stages. As a matter of fact, I think that all that was lacking on it was the inspection. After something had occurred in the shop with respect to myself and another worker, Nepsee came over to the bench and tossed the diagram at me of a small part that had to be made, having on it only two dimensions and not stating how many articles of that size and shape he wanted me to make.

He just said, "Make it up."

Q. What had happened with respect to this other employee whom you referred to? A. Well, when I came in to work that morning wearing my steward button, as I mentioned it had been visible, this worker had noticed it as well as any others with whom I had come in contact. It happened that I had been working on a bench which was adjacent to the welder assigned to our department, and this worker had some welding to be done on the job he was working at.

As he came over to the welder with his work he found that the welder was busy with work at the moment and he stopped at my bench to talk to me for a moment.

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No sooner did he come over then Stanley Nepsee who was right behind me, who has his desk immediately behind my bench and who can see me without my seeing him because my back is turned, came over and called this worker away. I didn't hear what was said, but as he called him away he tossed this diagram that I mentioned before at me and told me to go to work on it.

While he was finishing up speaking to this worker I went over to him to inquire about fuller details on the job. I couldn't follow exactly what he wanted me to do with the diagram so I needed more information. At that point he explained to me, he gave me the other dimensions which were lacking on the job and walked back to my bench with me, a few feet, stopped to talk to me for a minute and told me this.

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He said, "Bob, I want you to stay at your bench. Do your work, not mingle with any of the other fellows."

I asked him whether he had ever noticed me leave my work or loaf on the job or unduly congregate with any of the other workers in the shop to the detriment of the work, or at any time did he ever have any complaint about me.

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He said, "I am not saying I did. I am not saying you are guilty of these things. I just want you to follow these instructions from now on."

During lunch hour that day I spoke to——

Q. Just a minute. Have you completed, so far as you can recall, your recollection of the conversation in that incident that morning? A. With the exception that during lunch hour I spoke to the worker who had come to me at my bench.

Q. Well, I am talking about the incident in the morning? A. Yes.

Q. And about when in the morning did that occur? A. It is hard to say. I think it was around 10 o'clock or so.

Q. And you started work at what time? A. Eight.

Q. And that was the morning you came in wearing this steward's button? A. That is correct.

Q. Was there anything different about this sketch or diagram Mr. Nepsee gave you to work from that morning than diagrams you had received on previous occasions?

A. Well, for one thing it was of a part I had never made before, and secondly, it was lacking in full details as far as dimensions were concerned.

Q. Had you been loafing? A. I had not been loafing.

Q. At any time? A. Never loafed in the shop.

Q. Had you at any time left your machine during working hours for other than working purposes? A. I didn't work at a machine, but at a bench.

Q. Well, had you left your bench during working hours for any purpose other than the normal course of your work with the exception of the normal function of going to the men's room? A. Never.

Q. Did you see Mr. Kress that day? A. Is this the 25th you are speaking about?

Q. That is correct. A. No.

Q. You know Mr. Kress, do you not? A. Yes, I do.

Q. Mr. Kress' title is assistant to the president? A. I believe it is.

Q. Did you see him the next day, the 26th? A. Yes, I did.

Q. And when did you see him? A. I saw him during my lunch hour which is from 12:30 to 1:00 o'clock, together with Mr. Kahler in his office in the administration building at the plant.

Q. Did you discuss any subjects with Mr. Kress at that time? A. Yes.

Q. Was anyone else present besides Mr. Kress, yourself and Mr. Kahler? A. Not to the best of my knowledge.

Q. Well, tell us about the conversation. What did you say to Mr. Kress and what did Mr. Kress say to you and what Mr. Kahler said if anything. A. Well, to the best of my recollection when Mr. Kress came in, that is we had been waiting for him in the room, we introduced ourselves, I introduced myself as the chairman of the organizing committee; that is, of the Republic Organizing Committee, and Mr. Kahler as a member of that committee, and stated that we had some matters to discuss with them, with Mr. Kress that is, which we felt needed settling.

I enumerated the problems and as I recall them they were first the questions of the discharge of Sam Stone and Bob Katz; secondly, the right of union members to wear union steward buttons when so designated; the right to solicit for union memberships on a worker's own time; as well as one more point which was the adjustment of several grievances.

Mr. Kress listened and at that point, if I remember correctly, we sat down at his desk and after I enumerated the points that I wanted to speak about Mr. Kress said that he had an appointment at 1:30. The hour was already ap-

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proaching one at the time and that he had few things to do before then, and stated that it was a subject which could not easily be discussed within the space of a few minutes.

So that would we not make an appointment for the afternoon. Mr. Kahler and I both mentioned that since the wearing of our steward buttons the attitude which had been created toward us in our respective shops by our foremen and supervisors was such that it was ~~not conducive~~ to getting passes to walk around the plant.

563 Mr. Kress stated that we shouldn't worry about that, that he would take care of it, that he would call us up.

We then asked for an appointment at around three o'clock and Mr. Kress stated that it would be sometime later that afternoon and that he couldn't at the moment be pinned down to the exact time.

With that we left. I went back to work and I think Mr. Kahler did also.

Q. Was Mr. Kahler a steward also at the time? A. Yes, he was.

Q. And he was wearing the steward button? A. Yes.

Q. The same kind of a button you were wearing? A. Yes.

564 Q. And did Mr. Kress send for you for another meeting that afternoon? A. Yes, he did.

Q. About when was that meeting? A. Well, it was hard to say, it was about half an hour after I left his office originally. I suppose it was about 1:30 or thereabouts.

Q. And where did that meeting take place? A. That meeting took place, that is the name on the door of the office was that of Mr. Damon, and I suppose we were in Mr. Damon's office, though it looked like a board of directors room to me.

Q. Who was present? A. Mr. Kress, Mr. Lasker, Mr. Wilson, Mr. Kahler and myself.

Q. The Mr. Lasker you referred to was the factory manager at that time? A. I think that was his title.

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Q. And the Mr. Wilson you referred to is the gentleman who testified here yesterday? A. That is correct.

Q. Is that right? A. That is correct.

Trial Examiner Hektoen: Excuse me. Did you say that Kress was there too?

The Witness: Yes.

By Mr. Rose:

Q. Was Mr. Kahler wearing his steward button then?

A. To the best of my recollection he was.

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Q. You were wearing yours? A. I was.

Q. Well, tell us what was said at that meeting and by whom. A. It was quite a long meeting and I have to trust to my recollection.

Well, I think that Mr. Lasker started it off asking Mr. Kahler and myself to state the purposes of our visit. So throughout the meeting I acted more or less as a spokesman, so I answered that we had already stated the purpose to Mr. Kress previously in the day and that we thought that they knew what we wanted to speak about.

Mr. Kress asked me to restate the purposes of our mission there and I did. I stated the same things which I previously indicated.

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Q. The same as you stated to Mr. Kress? A. That is correct. Summarizing them I would say that they are: We told him that we wanted to speak about the discharge of Sam Stone and Bob Katz. We wanted to speak about the right of union members to solicit on their own time in company property and the right of union stewards to wear a union steward button.

Also that we wanted to discuss with them the subject of grievances within the group and the possibility of establishing a genuine grievance machinery.

Then we got into the discussion somehow and I stated our case, that is, the union's case, stating that we felt that

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the company was doing an injustice in discharging Bob Katz and Sam Stone for the reasons given in their discharge and for the causes which led to their discharge.

Q. Were they mentioned? A. I don't remember whether the representatives of the company or we mentioned the causes, but through the course of the discussion we naturally discussed the causes, and I remember saying that on the question of wearing steward buttons, for which Bob Katz was fired, that he was a union steward so designated by members of the union and that he could wear any insignia which his office called for.

To illustrate that point, I pointed out that a volunteer fireman chief, for example, in a small town might wear his Chief's button within the plant without actually being a "Republic Fireman." I pointed out that perhaps a Kingfisher or some other such designation of a lodge might wear the insignia of his lodge and its title within that lodge within the plant without it necessarily reflecting upon any connection with Republic.

I also pointed out that there was such insignia worn within the plant, that for example in particular was such insignia brought into the company property upon automobiles of workers who belonged to many different types of organizations, and that is company property; that no one to the best of my knowledge had ever been discharged for that, but that those singled out were the wearers of the union steward buttons and that that was interpreted by myself and by the union as discrimination against union stewards for union activity and on that basis was in violation of the principles established by the National Labor Relations Act.

At that point, and I might say throughout the discussion, Mr. Kress pressed me as to what my definition of a steward was.

To the best of my recollection I answered Mr. Kress that better definitions had been written than what I could give of a steward, but I also pointed out that a chief function of a steward was to organize in an unorganized shop.

I also pointed out, to go back, that this was clearly, by singling out the wearers of the steward buttons, a violation of the National Labor Relations Act, and Mr. Kress indicated that we were a little presumptuous in trying to tell the company the law of the land and that the company would abide by decisions which would be made through legal processes on the question, and he informed us throughout the discussion that we knew what we could do about it in so many words.

That is, I inferred from that that he meant: Go to the National Labor Relations Board on the question.

I think it was around this point that I stated another principle which I felt was a principle, and that is which motivated our coming to the management about these issues. I pointed out that we were only too well aware of the fact that the union at present did not have collective bargaining relations with the company and that nothing in our attitude should be interpreted by the company as being presumptuous in that respect but I felt that the actions of the company in a certain regard were not conducive to the best harmonious relations within the plant, thereby not being conducive to the good morale which is necessary among the workers for maximum production, and that the union was vitally interested in this question and that it was therefore that we came to speak to them on these matters, and it was because of this that we hoped we might reach some mutual agreement, although perhaps the whole thing wasn't according to Hoyle.

I think it was Mr. Lasker at this point who stated that harmonious relations do exist within the plant and that were being kept so by authority which it is necessary for

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there to be within the plant, meaning that, or the inference I got was that it meant the management.

I think that up to a point that was all we discussed on the question of stewards at that time, except one thing and that was that Mr. Kress pointed out that the reason the company couldn't permit the wearing of the union steward button was that it was misrepresentation. At least he said that he based himself on the fact that a steward could only exist in a union shop and that by wearing a union steward button we were giving the impression that this was a union shop.

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I asked to whom, and Mr. Kress stated "To the workers". I stated that I thought the company was a little bit naive on this question because unfortunately the workers knew only too well that this was not a union shop.

Mr. Kress then stated that we may be stewards in the union but that we are not stewards in the company and therefore have no right to wear the union buttons, and I stated that it is precisely because we are stewards in the union that we have the right to wear the steward buttons.

That I think generally speaking was the sum of the discussion on stewards.

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We then discussed the question of solicitation within the plant, and Mr. Lasker, I think it was, made us familiar with the rule which was indicated here yesterday on page 17 of the company rule books prohibiting solicitation of any kind in the plant.

Q. Please confine yourself to what Mr. Lasker said.

Trial Examiner Hektoen: He read that rule; is that right?

The Witness: He talked about it and read it.

Trial Examiner Hektoen: Go ahead.

The Witness: We stated that there were many different kinds of solicitations that took place there, that is on company property, gave a few incidents,

that is of the group insurance solicitation which had taken place on company property, and several other such cases, and we stated that here again it was not a matter of observing the law strictly on the question of solicitation but that no one but those who were soliciting for union membership were singled out for discharge or especially severe disciplinary action.

I pointed out in a question form: Isn't there solicitation within the plant? After giving specific cases Mr. Lasker said, "There is no solicitation within the plant."

Q. In connection with this particular phase of the discussion, you said "We pointed out" and "We said". Who did the talking? A. I did.

Q. Well, will you continue, please, telling us just what you said? Did you mention specifically examples of solicitation? A. Oh, yes.

Q. Well, go ahead. A. I mentioned specifically the solicitation which took place to the best of my recollection in June 1942 for group insurance. The group insurance which I had reference to was highly recommended in a letter sent out by Mr. Damon to I think all workers in the plant who had not yet availed themselves of the group insurance, speaking very highly of it, pointing out its merits and pointing out the need of workers for such group insurance, along with a hand-book issued by the Connecticut Life Insurance Company, I think it is, giving more details on this group insurance.

I pointed out that on that very day a poster had been hung on the steps of Building 17, advertising a dance to be held in the Hotel Pennsylvania with Vincent Lopez's picture on it and much other writing.

I pointed out that company affairs, that is, company sponsored sporting events and dances, had been plugged over the p.a. system, which is the public address system,

and that every lunch hour, and even during the day there were constant notices made over the public address system to the effect that these events were taking place and urging attendance and participation in these events.

For example, I think I pointed out there that at one time there was on a bulletin which was hung up on the bulletin board an activities calendar, so to speak, that stated that you may not use your car for pleasure driving but you may stop at the Republic club house, take part in these activities on your way home.

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I am sure I knew many other forms of solicitation in the plant, but I don't know at that point whether it was right there during that discussion that I pointed them out. I think I confined myself to these examples and pointed out that it was only those who were soliciting for union membership who were discriminated against and not those who were soliciting for all these other events and so forth.

A strange thing in my opinion took place when, after pointing out these events of solicitation Mr. Lasker instead of commenting on the cases themselves simply said that there was no solicitation in Republic at any time, and it is not permitted.

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I tried to ask the question whether this is permitted, and he said, "No solicitation is permitted." What I took that to mean was that in the opinion of, I think, Lasker, these things that I had pointed out were not solicitation.

I also pointed out that only a few short weeks prior to the time this conversation was being held a worker in Sperry Gyroscope Company had been fired for an almost identical reason, that of soliciting on company property, also on his own time, though.

I pointed out to Mr. Kress and Mr. Lasker and Mr. Wilson that this worker was reinstated within a couple of weeks through a decision by the National Labor Board with full back pay and the decision found that he was within his rights first of all soliciting on his own time, but in addition

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to that that in these plants where transportation is particularly limited through gas rationing and transportation is made very difficult and workers come from a radius of anywhere from 10 to 50 miles to work every single day, it is reasonable to expect that the shop would be the natural place for workers to talk to one another and encourage one another to join the union.

I pointed out to Mr. Kress that to the best of my knowledge this decision of the Labor Board was properly predicated on that principle.

At this point I think Mr. Kress told me again that it was a matter which the company would have to take legal steps on. In other words, that only legal action could convince them that they were wrong, and again indicated and inferred that we were a little presumptuous to try to teach the company law.

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Then in some way through the discussion we discussed the question of grievances, and I stated the case of the union that here on this subject of grievances was a matter of vital concern, and which, if the company would bear with us on this question and would cooperate with us on this question, I thought that it would be in the best interests of the war effort because there had been, and existed at that time, many unsettled grievances of workers within the plant which were responsible for a low morale and which brought about a situation where the maximum productivity of every worker could not be gotten in the plant.

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Again I pointed out that though we did not have contractual relations with the company that it was in the interests of the war effort that we proposed to them the establishment of grievance machinery not for collective bargaining purposes but only the right to take up the grievances of our own members who themselves constituted a substantial number within the shop, and whose grievances, whose unsettled grievances alone greatly hindered and greatly kept down the morale of a large substantial number of the workers in the plant.

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Mr. Wilson at that point pointed out that the grievance setup of the company was adequate to cope with any situation heretofore encountered, and that when we asked Mr. Wilson to explain the grievance setup, if I am correct, this is the way he explained it:

587 First, if a worker has a grievance he takes it to his lead man; if he gets no satisfaction from his lead man, he may take it to the foreman; if he gets no satisfaction from his foreman he may take the grievance to the supervisor; if no satisfaction is gotten there he may take it to the sectional supervisor; if no satisfaction is gotten there he may take it to the superintendent; if no satisfaction is gotten there he may take it to the factory manager, and so on up the line to the president. O

It seemed to me at that time, and I said so, that this was in no way an adequate grievance procedure and Mr. Wilson pointed out that hundreds and thousands of grievances were settled in this manner. Not being in any position to contest that, I said that we should take his word for it, but I also pointed out that hundreds and thousands of grievances were not being settled for lack of an adequate grievance machinery which I felt this was anything but.

588 I pointed out, for example, that in one shop alone, in 40 shop, for example, which is the sub-assembly shop, a system had started and had spread to other shops of handing workers cards, and I explained what the system was in this way:

A worker would be working at his bench and all at once either a foreman, a lead man or a shop clerk would walk up to him and hand him a card. The card would be a prepared card, mimeographed, or something like that, printed, stating "You have been reported to me for the following violation", and it would enumerate the violation.

I may not be accurate in this, but I think it is not too relevant perhaps, they were numbered (1) Smoking in

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the toilet; (2) throwing paper on the floor; (3) getting on line to punch the clock too early" or something like that.

Then it would say "Any recurrence of this violation will result in a serious reprimand for you" and it would be signed J. Koop, who was the supervisor.

I told Mr. Wilson that in the minds of most of the workers Koop was the sectional supervisor in 40 shop. In the minds of most of the workers Koop was the highest authority, as far as 40 shop goes. Could they take that grievance to their lead man or to their foreman or could they even take it to Koop, if for example they weren't even aware of when or where the infraction of that particular rule had taken place?

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They did not know who reported them. They did not know anything about that. I compared it with the Gestapo system at the time.

Mr. Wilson pointed out that someone had been up to speak to him only a couple of days ago on the question and that he, being the industrial relations director, was taking steps to cut out this practice which Mr. Wilson himself characterized as unjust.

I thought that that was actually a good step and I didn't press this particular point.

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Q. Confine yourself to the conversation, please. Was there anything else said? A. Yes. We couldn't get any further on the grievance question and I asked finally whether the company would reinstate Bob Katz and Sam Stone. Mr. Lasker asked me what will they do if they are reinstated.

I answered that they would work. Mr. Lasker said that they would not be reinstated.

Mr. Lumbard: You said "if they would work"?

The Witness (Continuing): —that they would work when he asked me what they would do if they were reinstated.

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I then said that since we were getting nowhere I asked "What shall we do?"

And Mr. Kress asked me "What do you intend to do about your steward's button?"

I asked him what he meant by that. He said, "Do you intend to continue wearing it?"

I said, "I do."

Mr. Kress then asked Mr. Kahler whether he intended to continue wearing his steward button. Mr. Kahler said he did.

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Before we left Mr. Lasker stated "I am compelled to give you a final warning that if you are seen anywhere on the premises wearing this union steward button you will be discharged."

We said "Good bye" and left.

Q. Did you continue wearing the steward button after that conversation? A. I did.

Q. And were you discharged that day? A. Yes, I was.

Q. How long after the conversation? A. About an hour.

Q. Who discharged you? A. Well, my papers were handed to me by my supervisor, Barney Svoboda.

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Q. Did he say anything to you at the time? A. Yes, he came up to me. I was working on a job and he came up to me and said, "I hear you had some kind of a squabble up in the office today. I don't know what it is all about but I was told to give you these."

I told him that he did know what it was all about. I told him that it was a matter of the steward button and that he had seen it on me particularly, that I smoked during smoking period directly across the aisle from him and sometimes we talked to one another, and my button was visible.

He said that he didn't know anything about it and the only thing he could do was to give me the papers and tell me to pack my tool box and leave.

Q. And you then checked out of the plant? A. That is right.

Q. I think you testified you became a steward on January 13, 1943? A. That is right.

Q. You were elected at a meeting? A. That is right.

Q. During the time you worked in the company, did anyone talk to you about buying books? A. Yes.

Q. When was that? A. Well, to the best of my recollection this took place in December of 1942.

Q. Who spoke to you about the books? A. My foreman, Stanley Nepsee.

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Q. What did he ask you about buying books if he asked anything? A. He told me that there were available a number of mechanical books on lathe questions, machinists books, jig builders books, and so forth, and he had a list of them, and he also had another list of names which he was writing down and he said, "If you want to buy a book I will take your name and the money and you will get the book from your shop clerk", whose name at that time was Jimmy Stewart, he was the shop clerk.

Q. And did you buy any books through Mr. Nepsee? A. I ordered a book, yes.

Q. You gave him the order for the book? A. That is right.

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Trial Examiner Hektoen: And the money?

The Witness: I didn't give him the money, I didn't have any money at the time.

By Mr. Rose:

Q. Who did you eventually pay for the book? A. I didn't eventually get it.

Q. Did you know whether Mr. Nepsee asked anyone else about buying books? A. Yes, I do.

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Q. Did you see anyone paying him any money for books? A. Yes, I did.

Q. When was that? A. Well, he asked two of us together and that was that same day. I don't recall the day. This other worker gave him something like 75 cents for whatever book it was. I don't recall.

Q. You say this is what occurred in December of 1942?

A. Yes.

Q. What was the name of the other worker? A. I think his name was Claude. I am not sure.

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Q. Claude? A. To the best of my recollection his name was Claude.

Q. Was it during working hours that Mr. Nepsee spoke to you or at another time? A. No, during working hours.

Q. And what time of the day was it when this other worker paid him the money for the book? A. It was at the same time that he had spoken to me. It was just that he spoke to me first and this other fellow next. We were working on the same job.

Q. And did Mr. Nepsee have a list of names with him? A. Yes.

Q. Did you see the list? A. I did.

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Q. Were there a lot of names on it? A. I don't think there were too many.

Q. There were some names on it, that is the best you can state? A. There were some.

Trial Examiner Hektoen: Did he come around to you where you were working with this other fellow and ask you about books?

The Witness: Well, he just didn't say that.

Trial Examiner Hektoen: He said, "There are books available"?

The Witness: "These are good books. Would you be interested in getting them?"

By Mr. Rose:

Q. Have you seen any collections taken up in the plant?

A. Oh, yes.

Q. Do you know a man by the name of Happy? A. I did.

Q. Do you know his full name? A. No, I don't.

Q. Where does he work? A. At the time I knew him he worked in I think it was the miscellaneous section of the fuselage department, that is department 50.

Q. Did you ever see him solicit? A. Yes.

Q. When was that? A. During the time that I worked in the fuselage department.

Q. Can you fix the time approximately? A. Approximately between the months of June 1942 and September 1942.

Q. Did he ever ask you for any money? A. Oh, yes.

Q. What was he soliciting for, did he tell you? A. Yes.

Q. What did he say? A. He told me it was for the fuselage benevolent association.

Q. And when did that occur? A. Well, these solicitations, these collections, took place each pay day, which was Thursday, generally on Thursday afternoons Happy would come around with a list of names and check your particular name off, the name of the worker who had given him the dime. The contribution was a dime a week.

Q. Did you see him go to other workers on these Thursdays? A. Oh, sure.

Q. This occurred during lunch hour? A. No, it occurred during the afternoon because we generally would not get paid until about two or three o'clock and he wouldn't come around before we got paid.

Q. He came around during working hours after you got paid? A. Yes.

604

Robert Bobrow—For Board—Direct

Q. Do you know whether your foreman or lead man ever saw him do that? A. Once particularly when I worked in the supply section of the fuselage, that is where the top and bottom halves of the fuselage were spliced, I remember Wesley Sergeant who was my foreman at that time and Marty Handshaw, who was my lead man, were both inside the fuselage with me when Happy climbed in and took dimes from the bunch of us.

Q. What do you mean they were inside the fuselage? A. Well, the rest of us were working inside the fuselage.

605 Q. Inside the fuselage of a plane? A. That is right. In the shell.

Q. And Happy went in there? A. Climbed over the top of the fuselage and made his collection.

Q. While these two men, this Mr. Sergeant and the lead man you mentioned, were working in the fuselage too; is that right? A. That is correct.

Trial Examiner Hektoen: Did he collect from them too?

The Witness: To the best of my recollection.

By Mr. Rose:

606

Q. Was that on one of these Thursdays, pay day? A. I believe it was.

Q. You referred to a solicitation for group insurance. When did that take place? A. I think it took place towards the end of June.

Q. What year? A. 1942.

Q. And how was that done, as far as you know? A. Well, I had known that many workers had previously gotten this group insurance but I being a relatively new worker, never got it, and that, perhaps, is why I received this letter from Mr. Damon, which was addressed as a personal letter to every employee who had not yet got his group insurance, but which was perhaps a form letter.

Nevertheless, I received that and the pamphlet and I think an application for the group insurance. I got that while at work from my foreman who was Wes Sergeant. I was also spoken to about the group insurance and told that it was a very fine thing by my timekeeper.

Q. What was his name? A. I don't know. I never knew his name. Also by my lead man.

Q. Do you know his name? A. The lead man?

Q. Yes. A. Marty Handshaw.

Q. Did you see the foreman give out this literature on the group insurance to other employees and yourself? A. 608 I saw him give it to one of the employees who was also a comparatively new employee in the department.

Q. One other than yourself? A. That is right.

Q. You referred, in connection with the meeting with Mr. Kress in the afternoon to announcements over the public address system. What type of announcements were there over the public address system in the plant? A. Well, announcements of glee club practice, inviting new members into the glee club, announcements of a Christmas party, announcements of sporting events, fights, dances, and the like.

Q. Were you ever solicited for a sporting event? A. 609 I was never solicited.

Q. Personally? A. Never.

Q. Were you ever solicited for a dance personally? A. No.

Mr. Rose: You may examine.

Trial Examiner Hektoen: We will have a five minute recess.

(Recess taken.)

Cross examination by Mr. Lumbard:

Q. Mr. Bobrow, you mentioned an incident when your foreman gave you a diagram to make a part. Was it your

610

Robert Bobrow—For Board—Cross

job in that department to make parts? A. Not specifically.

Q. Well, you did make parts from time to time? A. If the job I was working on required it, I did.

Q. Can't you answer my question? You did make parts from time to time, didn't you? A. Sure.

Q. And you made different parts? A. That is correct.

Q. You didn't always make the same part? A. That is right.

Q. And you would get diagrams from time to time about making parts, wouldn't you? A. No. If you would like to, I can explain how those parts were made.

611 Q. I will try to ask you some questions. When you made a part you sometimes would get a diagram to show you how to make it? A. Sometimes.

Q. You talked about the fact that there were hundreds and I think you used the expression "hundreds and thousands of grievances."

Were there any cases that you know of where there was a grievance which was discussed where an attempt was made to discuss a grievance with the foreman or with some superior officer and it was not possible to do so? A. No.

612 Q. I think you said you became a member of the union in April 1942? A. Yes.

Q. And you assumed some position on a committee? A. That is right.

Q. What was that? A. Chairman of the Republic Organizing Committee, UAW-CIO.

Q. How big a committee was that? A. I don't recall.

Q. Can you give us some idea of how many members of it there were? A. Somewhere between 15 and 40.

Q. You can't give us any better idea than that? A. No.

Q. Well, you were chairman of that committee, weren't you? A. Yes, I was.

Q. Anybody else who can give us a better idea than you can? A. I doubt it.

Q. Are you still chairman of that committee? A. I am.

Q. In October your committee, I suppose, commenced to function, that is, you started to do your organizing work?

A. We didn't start in October. We intensified what had been going on previous to October.

Q. Well, maybe that is a better way to put it, but you did some work in October? A. That is right.

Q. Well, what work did you do? A. Signed people up in the union.

614

Q. And that was done by members of the committee taking cards? A. Not only members of the committee, members of the International Union in general, but by members of the committee also.

Q. And they took cards with them when they went to work? A. Cards were given to them. I don't know whether they had them with them.

Q. Well, did you take some cards with you when you went to work? A. Yes.

Q. You say you don't know whether the others took any cards with them or not? A. I couldn't say for a fact that they took them in the plant.

615

Q. They were asked to, weren't they? A. No specific request was ever made for members of the committee to take cards.

Q. Were they given cards? A. They were.

Q. And then at some later date they brought back cards that had been filled out? A. That is correct.

Q. So in between that time they must have done something with the cards. A. Naturally.

Q. And the cards bore the names of people who were working in the plant, I suppose? A. Yes.

Q. And I suppose you as a member and as chairman of the committee took cards and had people sign them also? A. Yes, surely.

616

Robert Bobrow—For Board—Cross

Q. In the factory? A. Some.

Q. And some outside? A. That is right.

Q. And then you said that you passed out hand-bills at the gates? A. Yes.

Q. And you participated in that yourself? A. Sure.

Q. That was done on more than one occasion? A. Are you referring prior to my discharge?

Q. I am referring to the time between October when you say you became chairman of the committee, and January 26, when you were released: A. I think that it took place on

617 more than one occasion.

Q. Did your committee have meetings? A. Sure.

Q. How frequently was that? A. We call meetings every Wednesday evening after work.

Q. Were those meetings just of the Organization Committee or of the union group in the plant? A. They were open meetings of Republic Organizing committee.

Q. Open to whom? A. Just open. Nobody was ever thrown out of a meeting; we never had occasion to get any other than Republic workers or interested parties.

Q. They were open to members of your organizing committee and others in the plant who were interested; is that right? A. They were open meetings of the committee to members of the plant, to whom specific and particular appeal was made to attend these meetings.

618

We also had members of the International Union who were not workers in Republic and who were interested parties in the Republic Organizing Drive, attended these meetings.

We have also had members of the Farmingdale Community attend these meetings, and I would characterize them as having attended open meetings with the Organizing Committee reserving the right to limit attendance to whom it wanted to attend.

Q. So that the meeting of January 13 was one of those

regular weekly meetings; is that right? A. As I recall, it was.

Q. Consisting principally of members of the Organizing Committee? A. I am not prepared to say that. By that I mean, at some meetings many members of the Organizing Committee and a few outsiders attended, I am not prepared to say whether this was one of such meetings, or whether there was only a few members of the Organizing Committee and many outsiders.

Q. What kind of meeting was this meeting of January 13?

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Mr. Rubenstein: I would like to make an objection, that it is immaterial as to what kind of meeting it was.

Trial Examiner Hektoen: I think my ruling will be the same. As I understand the facts so far developed I think counsel is entitled to make this inquiry.

I will overrule the objection.

Now on the question of what kind of meeting it was, it was a meeting of interested people and perhaps some residents of Farmingdale's community; is that right?

The Witness: I don't think there were any residents of Farmingdale community at that meeting.

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Trial Examiner Hektoen: All right.

By Mr. Lombard:

Q. Who was at the meeting representing workers? Were most of them members of the Organizing committee? A. At that meeting?

Q. Yes. A. I think there was a substantial number.

Q. Your committee at that time was also somewhere between fifteen and forty? A. Yes, sir.

Q. How many people would you say were present at the

622

Robert Bobrow—For Board—Cross

meeting? A. All in all I would say there were thirty to thirty-five, or thereabouts.

Q. Is it not a fact that most of them were members of the Organizing committee? A. Many were.

Q. Up to this time had members of the committee worn any buttons? A. No.

Q. Had you buttons—

Mr. Rubenstein: Will you specify as to the place and name of the buttons.

623

Mr. Lumbard: I mean any buttons.

The Witness: I took that to mean within the plant and "the button" to be union buttons of any kind.

By Mr. Lumbard:

Q. Yes. Did they wear buttons outside the plant? A. I don't know.

Q. Did you have any buttons? A. I had buttons, yes.

Q. Prior to this meeting on the 13th you had buttons; did you not? A. I personally did.

Q. Yes, you did. A. Yes.

624

Q. What kind of button was that? A. You are referring to union buttons?

Q. Yes. A. A steward's button.

Q. It was a steward's button? A. That is right.

Q. Did you have any other kind of button? A. No, sir.

Q. Didn't you have plain CIO buttons? A. No.

Q. When did you first get your steward buttons? A. I got mine the day before the meeting.

Q. Which would be the 12th of January? A. Yes, sir.

Q. Did some of the other members of the Organizing committee get theirs at the same time you got yours? A. I couldn't say. I got mine after work, having stopped in the office and found that some buttons of that kind had arrived, I wanted to be in possession of one.

Q. Who gave you your button? A. I took it.

Q. Did anybody else take a button at the same time?

A. No.

Q. Did you take more than one so that you could give some out? A. No.

Q. Now, at the meeting the following night some decision was made, was it not, to give out the buttons? A. That decision was made.

Q. How many buttons were given out? A. I don't recall.

Q. You first wore your button on the 14th? A. No.

626

Q. You did not wear yours until the 25th, that is right, isn't it? A. That is right.

Q. So you just kept your button in your pocket in the meantime? A. I don't remember just where I kept it.

Q. Were some stewards chosen at this meeting on the 13th? A. Yes, sir.

Q. How many stewards were chosen?

Mr. Rose: I object to that as immaterial, incompetent and irrelevant.

Mr. Rubenstein: I join in the objection.

Trial Examiner Hektoen: I do not think we care about the number of stewards chosen unless you have something specific in mind.

627

Mr. Lumbard: I beg your pardon.

Trial Examiner Hektoen: I don't think we care about the number of stewards chosen unless you have something specifically in mind.

Mr. Lumbard: I was going to ask in the next question, whether he was chosen as a steward at that time.

Trial Examiner Hektoen: You may ask that question.

628

*Robert Bobrow—For Board—Cross**By Mr. Lumbard:*

Q. I think you said in your direct testimony you were designated a steward at that time, is that what you said?

A. I may have.

Q. What is the fact with respect to your becoming a steward at that time? A. The fact is that at that meeting a discussion took place with respect to the establishment of union stewards and we were elected and designated by the body.

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Q. That was on the night of the 13th? A. That is right.

Q. You got your button a whole day ahead of the time you were designated? A. Yes, a whole day.

Q. Did I understand you to say that you were designated as steward for the whole plant? A. I think I answered before that I was designated as union steward in Republic, within the plant.

I think I also mentioned that being employed in the jig shop at the time, which, if you know, was across the street from the main building of Republic, it was more convenient for me to work within the jig shop, but I was not confined to it by any rule or special regulation laid down by the union.

630

Q. What was your jurisdiction as steward?

Mr. Rose: I object to that as immaterial.

Trial Examiner Hektoen: He may answer.

Was it the plant wide?

The Witness: Yes, sir.

By Mr. Lumbard:

Q. Your duties as chairman of the Organizing committee had been plant wide also? A. Yes, sir.

Q. So that they were the same as that? A. No. There is a distinct difference between chairman of the Organizing committee and the union steward.

Q. After this designation on the night of the 13th, did you tell any man in your department—this was the jig department you were in, wasn't it? A. Yes.

Q. That you had been designated as a steward? A. I told some other members of the Organizing committee who happened to be in the jig shop, who told others.

Q. Let's confine it to whom you told. You told other members of the Organizing committee; is that right? A. That is right.

Q. And other union members? A. Some.

Q. To anyone else? You did not tell anyone who was not already in the union, did you? A. I beg your pardon. 632

Q. You did not tell anyone who was not already in the union, did you? A. No.

Q. So that although you were designated as a steward, you did not—

Mr. Rubenstein: Just a minute.

I object to this question as leading to a conclusion, that he didn't act as a steward. He might have acted as a steward without wearing a button.

Trial Examiner Hektoen: Is that the distinction you have in mind, Mr. Lumbard?

Mr. Lumbard: Well, I will put it another way. 633

Trial Examiner Hektoen: All right.

By Mr. Lumbard:

Q. You did not tell anybody who was not there at that meeting that night you were a steward, that you had been designated a steward, did you?

Mr. Rubenstein: I object to that as irrelevant and immaterial.

Trial Examiner Hektoen: He may answer.

Mr. Rubenstein: Exception.

The Witness: Yes, I did.

634

*Robert Bobrow—For Board—Cross**By Mr. Lumbard:*

Q. Just other union members who did not happen to be at that meeting, is that right? A. Some other union members.

Q. Yes. Now, Mr. Bobrow, at this meeting on the 13th was there some discussion as to who should wear the steward buttons and who should not, the following day? A. There was some discussion but it did not necessarily revolve about the following day.

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Q. Well, let's not limit it to the following day. Was there some discussion as to who should wear buttons after the meeting? A. After the meeting, yes, sir.

Q. I did not mean to put it quite that way.

There was a discussion at the meeting as to who should wear buttons? A. That is right.

Q. Was it decided as to which particular people should wear buttons? A. No.

Q. What decision was made, if any, as to who should wear buttons? A. As I recall the decision was that those who felt themselves ready and willing to wear buttons, should wear them.

636

Q. So that it was left to each man to determine for himself? A. Yes, sir.

Q. There was not any decision to be made by you as chairman of the Organizing committee? A. Oh, no.

Q. How many steward buttons were given out that night? A. I don't recall.

Q. You didn't have the button? A. No. Pardon.

You say I didn't have a button or the buttons?

Q. Well, you already had a button? A. That is right.

Q. You did not give them out, is that the idea? A. That is right.

Q. Do you have any idea how many were given out?

A. Nothing but a guess I might make.

Q. Now, after this meeting that you attended on the, I think, the 26th, wasn't it which you testified about, Mr. Kress was there and Mr. Wilson and Mr. Lasker? A. Yes, sir.

Q. And you went there with Mr. Kahler? A. That is right.

Q. Didn't Mr. Kress make it clear to you at that talk that the company had no objection to the wearing of union buttons, as such, as distinguished from steward buttons? A. He said it.

Q. That is what he said? A. To that effect.

638

Q. That the company had no objection to anybody wearing a CIO button, is that right? A. To that effect; I don't remember his exact words. That was the understanding I got from it.

Q. Yes. That is the understanding you got? A. Yes sir.

Q. And that the company's objection was only to the wearing of steward buttons because the people wearing them had not obtained any status as stewards in the plant? A. No, Mr. Kress didn't say that.

Q. He did not point that out? A. He said something else but not that.

639

Q. Well, I do not want to put any words in your mouth. You tell me what he did say. A. He said that he objected to the wearing of steward buttons on the ground that it was misrepresenting a fact, that is, it created the impression that Republic was a union shop and since we were not stewards in Republic recognized by the company having bargaining relations, therefore, on that ground it was misrepresentation.

That is the understanding that I got from what Mr. Kress said.

Q. Now, did Mr. Kress also make it clear to you that there was no objection to your talking about the union

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Robert Bobrow—For Board—Cross

while you were in the plant? A. I don't remember that question at all.

Q. What is that? A. The question of talking union, I don't think that question arose in our discussion.

Q. There was something which I think you have related to us, about soliciting and trying to get people to sign cards.

Was there not talk about that? A. Yes, there was.

Q. Because one of the things you were asked to take up with him was the release of Sam Stone, is that right?

641 A. Yes.

Q. Did not Mr. Kress point out to you that while the company objected to soliciting of members in the plant or any solicitation under the company rule, that there was no objection to your talking about the union? A. No, that question did not arise.

Q. Did the question of your right to organize the workers come up at this meeting? A. I think it did.

Q. And did not Mr. Kress make it clear to you that you had a perfect right to attempt to organize the workers in the plant? A. He made it clear that was his opinion, that was his position.

642 Q. And the company's position also? A. Well, I assured that Mr. Kress was speaking for the company.

Q. Exactly.

Mr. Lumbard: I am just looking through my notes, your Honor, to see if I have any more questions.

By Mr. Lumbard:

Q. Now, after you were designated steward at this meeting on January 13th, what did you do as a steward? A. To the best of my ability I supervised the enrollment of new members into the union and made union members familiar

with the fact that if they had any grievances which they wished me to take up with management for them, that I would do that.

Q. That was just what you had done before the meeting of the 13th, wasn't it? A. I beg your pardon.

Q. That was the same thing you had been doing right along? A. No.

Mr. Lumbard: Now, let's take each one of those. May I have the witness' previous answer read?

(The record was read.)

By Mr. Lumbard:

Q. You supervised the new members before that, hadn't you? A. No.

Q. When you was chairman of the Organizing committee? A. That is right, but within the plant I simply enrolled to the best of my ability without any supervisory efforts guiding the work of other union members who were recruiting into the union.

Q. After the 13th, you began to supervise? A. That is right; I understood that as part of my function.

Q. Before that time nobody had supervised the new members? A. Not officially.

Q. How did you supervise the work of members? Tell us what you did. A. I spoke to them on my own time about where they could probably, in what sections or departments, obtain new members.

Q. You had been doing that right along, had you not? A. No.

Q. You had not done that as chairman of the Organizing committee? A. No.

Q. Go ahead. You were telling us what you did. A. And help them to the best of my ability, within the confines of what I was able to do on the company property.

646

Robert Bobrow—For Board—Cross

Q. Can you be more specific than that? A. For example, I worked in the jig shop, see, and if a fellow in one section of the jig shop wanted me to be present when he spoke to another worker in his particular section, I consider that assistance supervision.

Q. To be present when he talked to him? A. When he spoke to the worker trying to encourage him to join the union, believing that perhaps I might be able to clarify that particular worker on any objections or any points which were not clear to him regarding the union.

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Q. You had helped other union members that way before the 13th of January, had you not? A. Not that I recall.

Q. Do you mean to say that in every instance before the 13th of January you had not helped anybody get members? A. I wouldn't say as a strict rule, but I say this: I didn't make a practice of it.

At the present moment, I don't recall having gone out of my way to help anybody enroll members.

Q. So what it amounts to is that you just became more active in your organizing after the 13th of January? A. That is only part of it.

648

Q. Is there anything else you did differently after your designation on the 13th? A. Will you make that a little more clear. I don't know just what you mean by "anything."

Q. Well, you told us that after the 13th you went to help other people when they were talking to people about the union. A. I did that, yes.

Q. And that was different from what you had done before that? A. Right.

Q. And you also said that—I don't remember exactly, but that you spoke to them about places in the plant they should do certain of their work. A. No, I didn't say that.

I said that I told them to the best of my knowledge where new members could be enrolled, and where possible helped members of the union enroll these people.

Q. And that is what you told people who were already members of the union? A. That is right.

Q. After the 13th? A. That is right.

Q. Now, do you mean to say you did not do the same thing before the 13th of January? A. That is right.

Q. Do you mean that before the 13th of January as chairman of the Organizing committee you never told a union member where he might go and try to enroll other members? A. That is right; and I mean to say that after the 13th I did not tell the union members to go to these places.

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I mean to say that the thing I done was point out where it was possible and necessary to build the union.

Q. Let me get those words. A. Point out where it was possible and necessary—

Q. Point out where it was possible and necessary to build the union? A. Where it was possible and necessary to build the union.

Q. You never did that before the 13th of January? A. That is right.

Q. Now in addition to those two items, what I would like to do is have you tell us everything you did after the 13th of January that you had not done before the 13th of January, and you have told us those, isn't that right? A. (No answer.)

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Q. Now, is there anything else? A. One minute, Mr. Lombard. You are referring to the 13th of January. All this while I thought you were referring to the 25th of January, when I put on my steward button.

Q. You mean you did not really become a steward until the 25th? A. That is right, not as far as members in the shop were concerned; in other words I didn't tell anybody that I would, for example, take up their grievances if they so desired, until the 25th, until the time I put my steward

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Robert Bobrow—For Board—Cross

button on, and that I just wanted to mention that because I just heard you mention that you were referring to the period after the 13th, and I had in mind that you were referring to the period as of the 25th.

Q. So that while you were designated as a steward on the 13th, you did not attempt to do anything as a steward until the 25th? A. That is right.

Q. Is that right? A. That is right.

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Q. What did you do on the 25th that was different? A. At other times, as I say, I told the workers, members of the union, that if they should want I would take their grievance up with the management.

Q. You told that to members of the union? A. That is right.

Q. Did you tell any foreman or supervisor that you had been authorized to handle grievances for members of the union? A. No.

Q. Why not?

Mr. Rose: I object to that as immaterial, incompetent and irrelevant.

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Trial Examiner Hektoen: Well, he just didn't. I don't whether you can inquire into the reason.

Mr. Lombard: I will withdraw the question until I have asked another one, your Honor.

By Mr. Lombard:

Q. Did you have any grievances to take up on the 25th for anybody? A. No, sir.

Q. So that even while there were hundreds of thousands of grievances you had none to take up on the 25th?

Mr. Rubenstein: I object to that.

By Mr. Lombard:

Q. Well, you did not take up any anyway? A. That is right.

Q. Now, the answer you gave a few moments ago as to what you did differently at a particular time, do you want those answers to apply to any change in your conduct on the 25th of January instead of the 13th? A. Relating to what?

Q. Well, I asked you some questions. Perhaps it would be simpler if I just asked them over again.

Trial Examiner Hektoen: The record now indicates that the witness answered them having in mind that you had meant January 25. 656

Mr. Lombard: I just want to be sure about that, your Honor.

Trial Examiner Hektoen: Yes, sir. I think that is clear.

By Mr. Lombard:

Q. Perhaps I can save a little time by attempting to sum up what I understood you to have said, Mr. Bobrow.

On the 25th of January, you commenced at that time to help other members of the union to talk to people about the union? A. Do you want me to answer? 657

Q. Yes. A. Yes, sir.

Q. That was something that you had not done up to that time? A. That is right.

Q. And likewise at that time you commenced to point out to members of the union where it was possible and necessary to build the union? A. Right.

Q. Up to that time you had not done that? A. Right.

Q. Is that right? A. That is right.

Q. Now, was there anything else you did after the 25th of January that you had not done before that time? A.

658

Robert Robrow—For Board—Cross

Yes. I went to members of the union and told them that if they wanted me to I would take their grievances up with management.

Q. You have just told us that. A. All right.

Q. If I understand your testimony that you have given here this afternoon, you told the members of the union right after January 13th that you were then a steward? A. Told those who were not present at the organizing committee meeting, that I was designated a steward, without further discussion on the subject.

659

Q. Yes. A. And on the 25th, when I wore my steward button, I assumed the functions of a steward, and what I have related to you took place between the 25th and 26th when I was discharged.

Q. Now, on the 25th, please tell us just whom you spoke to about your readiness to take up grievances.

Mr. Rubenstein: I object to that.

First of all, it would endanger the people in the shop, if he refers to any names.

By Mr. Lombard:

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Q. I will not ask for particular names.

How many people did you speak to? A. I don't recall.

Q. You cannot give us an estimate? A. Nothing more than a guess.

Q. What is your best guess.

Mr. Rubenstein: I object to that as irrelevant and immaterial, as to how many people he spoke to.

Mr. Rose: I object to it as immaterial.

Trial Examiner Hektoen: He may answer.

What would you say roughly?

The Witness: This is the 25th you are speaking about?

By Mr. Lombard:

Q. Yes. A. About twelve, fifteen or eighteen people.

Q. Did you tell them all at once? A. I beg your pardon.

Q. Did you tell them all at once? A. No.

Q. Where were you when you told them? A. In the factory.

Q. What part of the factory? A. The respective parts of the factory where they worked or perhaps in the aisle smoking, and as I came in in the morning with the steward button-I informed them here and there in a group of four.

Q. You were in the jig department? A. That is right.

Q. Is that where you were when you told these men? A. That is right.

Q. What other departments? A. It is all a part of the jig department, that is, the jig shop with the various departments; there is a welding department; there is a jig department; there is a tool department and there is a die department and so on.

Q. What time of the day did you do that? A. In the morning before work.

Q. You told all twelve to eighteen before work? A. That is right.

Q. How long did that take?

Mr. Rose: I object to it as immaterial.

Trial Examiner Hektoen: Overruled.

By Mr. Lombard:

Q. Do you remember what time you arrived that morning? A. No. I remember arriving early.

Q. About how early? A. I don't recall.

Q. Now, did you take a regular conveyance of some kind from Hempstead? A. At that time I was using my own car.

Q. You started to work at what hour? A. Eight o'clock.

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Robert Bobrow—For Board—Cross.

Q. How early would you say you arrived? A. I don't remember.

Q. You cannot give us any idea how long it took you to tell these twelve to eighteen men? A. It didn't take long.

Q. It was all done before eight o'clock? A. Sure.

Q. And did they tell you about any grievances for you to take up? A. No, they didn't have time to go into any details.

Q. But you told them if they had any grievances you would take them up? A. Yes.

665

Q. Is that right? A. That is right.

Q. None of that indicated that they had any? A. No.

Q. You said you did that on the 25th, and did you do the same thing on the 26th? A. No.

Q. Did any men tell you about any grievances on the 26th? A. I was aware of some.

Mr. Lumbard: I move to strike it out.

Please answer the question.

Trial Examiner Hektoen: It will be stricken.

Did anybody tell you about any grievances on the 26th?

666

The Witness: I couldn't answer that with full—I don't recall.

By Mr. Lumbard:

Q. According to your testimony there were only two days when you were acting steward? A. That is right.

Q. The 25th and the 26th? A. That is right.

Q. And now, during either of those two days, the only two days when you acted as steward, did you get any grievances from anybody? A. Not in the shop.

Q. Well, did you get some outside the shop? A. Yes, I did.

Q. What were they? A. Pardon?

Q. What were they?

Robert Bobrow—For Board—Cross

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Mr. Rubenstein: I object to this as irrelevant and immaterial to the issue here being tried.

Trial Examiner Hektoen: I do not think the nature of them important, Mr. Lombard.

Mr. Lombard: I am asking the question so that we can judge as to whether the witness actually and in fact did have any grievances brought to his attention.

Mr. Rubenstein: He said he did. As to what they were—

Mr. Lombard: I am not bound by his answer in view of the way he has testified. 668

Trial Examiner Hektoen: Well, if that is the purpose, he may answer.

The Witness: Will you repeat that question?

Trial Examiner Hektoen: Read the question, please, Mr. Reporter.

(Question was read.)

A. The one specific grievance I received on that day was the grievance relating to the card system, handing an employee a card saying he was charged with violation, checked on that card, and signed by the supervisor. 669

By Mr. Lombard:

Q. That was after hours or when? A. That was after hours.

Q. Which would be after what time? A. 6:30.

Q. At night? A. Right.

Q. That was after you were released? A. Pardon?

Q. That was after you were released? A. No, I am talking about the 25th.

Q. Yes. A. You said either of those days.

Q. I thought his Honor's question was the 26th. Maybe

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Robert Bobrow—For Board—Cross

I was wrong. A. As I remember your question, you asked me either of those day I acted as steward.

Q. I thought you were answering the Examiner's question. A. I am sorry.

Trial Examiner Hektoen: All right.

By Mr. Lumbard:

Q. You got that after hours on the 25th? A. The 25th.

671 Q. Did you talk to a foreman or supervisor about that grievance? A. On the 26th I raised that grievance with Mr. Kress, Mr. Lasker and Mr. Wilson.

Q. Did you attempt to talk to the foreman? A. No, because that grievance, to the best of my knowledge, did not exist within my own direct shop.

Q. Did not exist in the jig shop? A. Not to the best of my knowledge.

Q. As a matter of fact when you discussed it on the 26th with Mr. Kress and others you were told it had been stopped; were you not? A. That is what I was told.

Mr. Rose: May I interrupt for a moment, please?

Mr. Lumbard: Go ahead.

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Mr. Rose: May we go off the record for a moment, Mr. Examiner.

Trial Examiner Hektoen: Yes.

(There was a discussion off the record.)

Trial Examiner Hektoen: Back on the record.

By Mr. Lumbard:

Q. Mr. Bobrow, after the meeting on the 13th of January, was there any other steward designated to act in the jig department besides yourself? A. Well, all stewards

who were designated were plant stewards on a plant wide basis. I think that should be understood.

Q. Yes. A. None were specifically designated for the jig shop.

Q. Your Organizing committee work was also on a plant wide basis? A. Mine in particular or the work of the committee?

Q. Well, both yours and the committee's. A. Yes, I would say it was.

By Mr. Lumbard:

Q. Mr. Bobrow, how many people were designated as stewards at this meeting on the 13th of January?

Mr. Rubenstein: I object to that. I think you ruled on that last time as to the number of people that were designated. It is immaterial and irrelevant as to how many people were designated as stewards.

Trial Examiner Hektoen: I think I will permit the answer, Mr. Rubenstein.

Mr. Rubenstein: Exception.

Trial Examiner Hektoen: You may answer.

The Witness: I don't recollect.

By Mr. Lumbard:

Q. You were there during the whole meeting? A. As I remember it, I was.

Q. Was Mr. Kahler designated as steward at that meeting?

Mr. Rubenstein: I object to that.

Mr. Lumbard: He is one of the four employees involved in this case, your Honor.

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Robert Bobrow—For Board—Cross

Mr. Rubenstein: I object on the ground that it is immaterial as to when he was designated, and how he was designated.

Trial Examiner Hektoen: He may answer.

Mr. Rubenstein: Exception.

Trial Examiner Hektoen: Was he designated at that meeting?

The Witness: I think he was.

By Mr. Lumbard:

677 Q. When did you decide to put on your steward's button? A. Well, I put it on the 25th.

Q. When did you decide that you would do that?

Mr. Rose: Objected to as immaterial.

Trial Examiner Hektoen: He may answer.

The Witness: I don't recall. I don't recall if it was the morning or the previous day. As I remember, it was on Monday.

By Mr. Lumbard:

Q. Was it as a result of talking with anyone?

678 Mr. Rubenstein: I object to that as irrelevant and immaterial.

Trial Examiner Hektoen: Overruled.

The Witness: I don't think so.

By Mr. Lumbard:

Q. Was it the result of talking with Mr. Kahler? A. Yes, I think we did speak about it.

Q. When was that? A. I don't remember.

Q. Was it at some meeting? A. I don't think so.

Q. Had you had some meeting the night before, that

Robert Bobrow—For Board—Cross

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is, some meeting of the organizing committee or of the Union? A. No. The night before was Sunday night.

Q. Well, did you have some meeting the night before?

A. No.

Q. Did you have any—

Mr. Rubenstein: At this time I suggest that counsel specify the time, as to whether it was the time he was putting on the steward's button or whether or not there was any talk generally as to steward's buttons.

Mr. Lumbard: You can bring that out.

Mr. Rubenstein: The Examiner—

Trial Examiner Hektoen: This applies to this man alone, that is, to his putting on the steward's button on the 25th of January.

Mr. Rubenstein: I see. When he put it on?

680

By Mr. Lumbard:

Q. Did you have any discussion with anybody as to when you yourself would put on your steward's button?

A. I don't recall whether it was a discussion. There were certain known decisions reached, and I do not recall any formal discussion, but I do recall speaking to Mr. Kahler about it.

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Q. Some time prior to the morning of January 25th?

A. That is right. I mean, I suppose it was.

Q. Well, was this discussion with him about Kahler's putting on his button, or about your putting on your button? A. I think it was about both.

Q. Was there anybody else present with you? A. I don't recall.

Q. You think it was just the two of you who talked about it? A. I don't recall.

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Robert Bobrow—For Board—Redirect

Q. And you don't remember where this talk took place?

A. No, I don't.

Q. Did you provide Kahler with a button at the time you talked to him? A. No, I didn't.

Q. He had his own button? A. I don't know.

Mr. Lumbard: You may examine.

Redirect examination by Mr. Rose:

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Q. Mr. Lumbard asked you some questions with reference to the meeting of January 13th, at which there was some decision concerning the wearing of steward's buttons. Who were authorized to wear steward's buttons? A. I don't follow what you mean.

Q. Well, was anyone else other than the steward authorized to wear a steward's button? A. What?

Mr. Rose: Will you read the question, please, Mr. Reporter?

(Question read.)

The Witness: No.

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By Mr. Rose:

Q. The wearing of steward's buttons was confined to stewards; is that correct? A. That is right.

Q. You were asked this question, and you made this answer, referring to page 323 of the record:

"Q. Did not Mr. Kress make it clear to you that you had a perfect right to attempt to organize the workers in the plant? A. He made it clear. That was the fact. That was his position."

To what were you referring? A. I was referring in that, that he said it.

Q. You mean your answer to the question which I read to you refers to what Mr. Kress said? A. I don't mean to say he said it in just those words, but I do recall him having said that the fact that the company is taking these actions—I mean in regard to Sam Stone and Bob Katz—did not in any way reflect its attitude, that is, which was that the company had a right—that the union had a right to attempt to organize in Republic.

Q. In other words, your response to what Mr. Lumbard asked you in that question was your recollection of what Mr. Kress said? A. That is right, because—

Q. That was at the January 26th meeting? A. That we had with Mr. Kress, yes, sir.

Mr. Rose: I have nothing further.

Mr. Rubenstein: There are only one or two questions that I would like to ask.

Recross examination by Mr. Rubenstein:

Q. Now you testified on Friday as to a conversation which you had with Mr. Lasker and Mr. Kress. Do you recall as to the definite reasons given to you for the discharge of Sam Stone and Bob Katz?

Mr. Lumbard: What was the question, please?

Trial Examiner Hektoen: Read the question, please, Mr. Reporter.

(Question read.)

The Witness: There were no definite reasons stated by the representatives of the company at this meeting. But the questions, as I raised them, that Sam Stone was fired for soliciting on company property and that Bob Katz was fired for wearing a steward's button, were not disputed by the management.

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*Robert Bobrow—For Board—Recross**By Mr. Rubenstein:*

Q. And, if I remember correctly, you said that when you asked for the reinstatement of those people, the company asked you whether or not they would continue wearing steward's buttons if reinstated; is that correct? A. It was not placed in that way. It was placed in this way:

I think it was Mr. Laske^r who asked me, "Well, what will they do, if we reinstate them?"

And I answered that they would work.

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Q. Was there any question about their wearing steward's buttons? A. Upon reinstatement.

Q. Yes. A. That was not raised at that meeting.

Q. Now the meeting at which the question of steward's buttons was taken up was on the 13th or 15th of January?

A. If I had a calendar, I could tell you better.

Q. The reason I am asking that question is because I was under the impression that at one time you stated the 15th, and I would like to get it clear. A. (Referring to calendar.) That meeting was on the 13th.

Q. I was under the impression that at one time you mentioned the 15th, and I would like to straighten it out. You say, it was on the 13th? A. That meeting was on the 13th.

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Q. If you made a statement that it was on the 15th, it was a mistake on your part?

Mr. Rose: He didn't say that.

Mr. Whittlesey: No.

Trial Examiner Hektoen: Then we are all agreed that it was the 13th?

Mr. Rubenstein: All right.

By Mr. Rubenstein:

Q. I think you also testified that at this meeting it was decided to leave to the individuals the decision of putting

on the steward's buttons or not. Is that correct? A. That is correct.

Q. There was no order that each one must wear a steward's button on a certain day? Is that correct? A. That is correct.

Q. Can you tell the reasons why it was left to the individual man to wear the steward's button or not?

Mr. Lumbard: I object.

Trial Examiner Hektoen: Was it discussed?

The Witness: Yes, it was.

Trial Examiner Hektoen: He may answer.

The Witness: As to that decision, there was no decision made as to when these men should put on buttons because it seemed in each department that each man worked in each part of the shop, and his readiness to put it on in one particular part of the shop would not necessarily concur with another person's readiness to put on his button in another part of the shop, and, therefore, there was no special time set for any of the stewards, as I recall it, and it was left to the discretion of each individual.

Mr. Rubenstein: That is all.

By Mr. Lumbard:

Q. You say you were working in the jig department on the 13th of January? A. Yes.

Q. Could you say about how many men were working on the day shift in the jig department at that time? A. I could just take a guess. I imagine the company would know better. Roughly about eight hundred.

Q. At this meeting at which you were designated on the 13th, how many men were there from the jig department?

A. I don't remember.

Q. Did you observe how many men were there from

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Robert Bobrow—For Board—Recross

your department? A. I may have observed at that time, but I don't remember now.

Q. In other words, you can't remember now whether you observed or not? A. How do you mean that? Whether I observed at that time or not?

Q. You are not sure now whether you took any note of how many men were there from your department? A. No, I don't think I took any special note of how many there were from my department.

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Q. Did you take any note at all? A. I remember some people being there, but I don't know how many.

Q. Were you designated by the men from your department?

Mr. Rose: Objected to as immaterial.

Trial Examiner Hektoen: He may answer.

The Witness: Not by the men from my department. I was designated by the entire meeting.

By Mr. Lumbard:

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Q. As I understand it, you are head of this organization at this time, the organizing committee? A. I was the chairman of the organizing committee. I was not the head of the organizing drive.

Q. Among the employees in the plant at that time, was there any person who held a position superior to yours?

Mr. Rose: I object as immaterial and irrelevant.

Trial Examiner Hektoen: In what connection,

Mr. Lumbard? I do not think I follow it.

Mr. Lumbard: With respect to the organization of the employees into this union.

Trial Examiner Hektoen: He may answer.

The Witness: Not to the best of my knowledge.

By Mr. Lombard:

Q. Were you familiar with whether there were any records kept of your organization? A. There were no records kept.

Q. So that there was no record made of the people who were designated as stewards at this meeting on January 13th? A. That is right.

Q. And there is not anybody who could tell us how many stewards were designated at that meeting? A. Oh, there may be somebody with a more accurate memory than mine, but I don't think so.

Q. Well, you don't know of anyone at this moment, do you? A. No, I don't.

Q. Who can tell us how many stewards were designated, I mean? A. No.

Q. And no records were kept of how many stewards were designated? A. No official union record.

Q. Was any record kept as to who was designated stewards at that meeting? A. I have no idea whether any individual kept a personal record, but so far as the union is concerned, there was no record.

Q. But you do not know of any record being made? A. No, sir.

Q. You testified about some talk at this meeting on January 26th with Mr. Kress with respect to the reinstatement of Mr. Katz, and you wished to know, I take it, whether the company would reinstate him? A. That is right.

Q. And did Mr. Kress ask whether Katz would continue to wear the steward's button, if he were reinstated? A. No. I remember this very distinctly, and I do not think it was Mr. Kress who spoke, but I think it was Mr. Lasker.

Q. Let me substitute "anyone". Did anyone on behalf of the company ask whether Katz would continue to wear

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Robert Bobrow—For Board—Recross

his steward's button, if he were employed again? A. No. Shall I repeat what I stated before, that to the best of my recollection, what was stated was the following, and I am almost certain it was Mr. Lasker who asked, "What will they do?" referring to Katz and Stone.

There was no separation of Stone or Katz. He said, "What will they do if they are reinstated?"

And I answered that they would work.

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Q. Didn't you say that Katz would wear the steward's button, if he were re-employed? A. I didn't say anything of the kind.

Q. Did you indicate that he would not wear the steward's button, if he were re-employed? A. I answered the question which was put to me, which was, "What would they do if they were reinstated?" and I stated that they would work, and the whole conversation was confined to that, and that was that.

Mr. Lumbard: That is all.

Mr. Rose: No further questions.

Mr. Rubenstein: I would like to ask one question.

(Conferring with associates.)

702

No questions.

Trial Examiner Hektoen: Mr. Bobrow, this matter of wearing steward's buttons was talked about by Mr. Kress with reference to yourself and Kahler, was it not?

The Witness: Yes, sir.

Trial Examiner Hektoen: And I think you said that you did most of the talking at the meeting, so far as the union was concerned?

The Witness: Yes, sir.

Trial Examiner Hektoen: And you said that you personally would continue to wear it, did you not?

The Witness: Yes, sir.

Raymond Kahler—For Board—Direct

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Trial Examiner Hektoen: And you said that you people would continue to wear them, did you not?

The Witness: Yes, sir, when asked point-blank by Mr. Kress, I said I would, and then Mr. Kress asked Mr. Kahler specifically, and he said he would, but there were two separate questions.

Trial Examiner Hektoen: Then somebody—and I think you said Lasker—said, "If you do, you will be discharged." Is that correct?

The Witness: We already had the buttons on.

Trial Examiner Hektoen: Yes.

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The Witness: And Mr. Lasker said that if we were seen any place on the premises, following that conference, that we would be discharged..

Trial Examiner Hektoen: You probably told us who Mr. Lasker was, but I missed it. Who is he?

The Witness: I think his title is factory manager.

Trial Examiner Hektoen: Oh, yes, that's right. That is all I have. Is there anything more?

Mr. Rose: I have nothing further.

Trial Examiner Hektoen: Thank you, Mr. Bobrow.

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(Witness excused.)

Mr. Rose: Mr. Kahler.

RAYMOND KAHLER was called as a witness by and on behalf of the National Labor Relations Board and, being first duly sworn, was examined and testified as follows:

Trial Examiner Hektoen: Will you state your name? \

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Raymond Kahler—For Board—Direct

The Witness: Raymond Kahler.

Trial Examiner Hektoen: Where do you live?

The Witness: Beatrice Avenue, Syosset, New York.

Direct examination by Mr. Rose:

Q. Were you employed by Republic Aviation Corporation? A. I was.

Q. When were you first employed there? A. January 21, 1942.

707 Q. In what department did you first work? A. 01 shop, material preparation.

Q. At what rate did you start? A. 60 cents an hour.

Q. Until when did you work for the company? A. Until January 26, 1943.

Q. Were you discharged on that date? A. I was.

Q. What was your rate at that time? A. 90 cents an hour.

Q. You had received increases during your period of employment, that brought you up to 90 cents an hour? A. That is right.

708 Q. Did you sign an application for membership in the charging union? A. I did.

Q. Do you recall when you signed it? A. About the middle of October, I presume.

Q. What year? A. 1942.

Q. I show you this card, which is an application for membership in the charging union, and I ask you whether your signature appears thereon? A. That is right.

Q. Will you look at the face. Does the date on the card refresh your recollection as to the date you signed it? A. Yes.

Q. What is the date? A. October 14, 1942.

Q. The application card you signed on the date you mentioned is the same as the card marked Board's Exhibit

Raymond Kahler—For Board—Direct

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No. 14, insofar as the printed matter on the card is concerned? Is that correct? A. Yes.

Q. Did you become a shop steward? A. Yes, I did.

Q. When did you become a shop steward? A. On January 13, 1943.

Q. Were you elected? A. I was.

Q. At that meeting? A. Yes.

Q. Did you distribute union leaflets? A. I did.

Q. Where? A. Where?

Q. Yes, sir. A. I distributed union leaflets at the gate, I mean on the main highway outside the gate of Republic Aviation. 710

Q. Can you give us the approximate time when you did that? A. I should say approximately around the first part of January.

Q. 1943? A. 1943.

Q. Did you also attempt to obtain signed applications for the union? A. I did.

Q. And you attempted to interest people in signing up for the union? A. Yes.

Q. Did you wear a steward's button at any time? A. I did.

Q. When for the first time did you wear the steward's button? A. January 26, 1943. 711

Q. And did you wear it in the plant during working hours? A. I did.

Q. Where did you wear the steward's button? A. I wore it on my shirt, on the left-hand side, over my heart, next to my special identification button.

Q. Was it plainly visible? A. Yes.

Q. I direct your attention to Board's Exhibit No. 15 and ask you whether the steward's button you wore was identical to the button I show you? A. It was.

Q. Did you wear that button into work on January 16, 1943? A. On January 16?

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Raymond Kahler—For Board—Direct

Q. January 26. Excuse me. A. On January 26th I wore the button into the shop.

Q. Who was your lead man at that time? A. My lead man was—in fact there were two men, Harry Lebaire and Benjamin Molina.

Q. Did Lebaire say anything to you that day with reference to the button? A. Yes, he walked over to me in the morning, while I was at work, and he asked me if I was serious about this business, and he pointed to the steward's button and—

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Q. Did you—excuse me. Go ahead. A. —and I stated that I was.

Q. Did you attend a meeting with Mr. Kress that day? A. I did.

Q. When did you first meet with Mr. Kress on that day? A. Oh, I should say roughly it was during lunch time, and was about a quarter to one.

Q. Where did you see Mr. Kress? A. I saw Mr. Kress in his office.

Q. Who was there? A. Mr. Kress, Bobrow and myself.

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Q. And tell us what took place at that meeting? A. Well, we introduced ourselves, and Mr. Bobrow stated the purpose of our visit to Mr. Kress, which was mainly to discuss the discharge of two union members, Sam Stone and Bob Katz; and also to take up the question of solicitation and wearing of steward's buttons, and the question of some minor grievances.

Q. After Mr. Bobrow told that to Mr. Kress, what did Mr. Kress say, if anything? A. Mr. Kress stated that he had an appointment at 1:30, and that he would like to see us at a later date, at a later time in the day.

So Bobrow stated that at any time it was convenient to him, and Mr. Kress said, "Supposing we make it for around 3:00 o'clock?"

Raymond Kahler—For Board—Direct

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So Bobrow stated that it would be hard for us to get a pass from the shop, and would Mr. Kress call us at that time, and so he said he would.

Q. Were you wearing your steward's button at that time? A. Yes, I was.

Q. And was Mr. Bobrow? A. Yes.

Q. And did Mr. Kress call you later that day? A. Yes, he did.

Q. Was there another meeting? A. Yes, there was.

Q. About when was the second meeting? A. The second meeting was around 1:30.

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Q. Who was present at that meeting? A. Mr. Kress was present, Mr. Wilson—

Mr. Lumbard: You said the second meeting was around what time?

The Witness: Around 1:30.

Trial Examiner Hektoen: Kress, Wilson, and who else?

The Witness: And Mr. Lasker.

Trial Examiner Hektoen: And you and Bobrow?

The Witness: Bobrow and myself, yes, sir.

By Mr. Rose:

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Q. Will you give us your recollection as to what occurred at that meeting, and what was said and who said it?

A. The meeting was opened up, and Bobrow said that we had already stated the purpose to Mr. Kress, and Mr. Kress said, or Mr. Lasker, rather, spoke up and said that he would like Bobrow to restate the purposes of the meeting.

So Bobrow told him that we were up there on the discharge of Sam Stone and Bob Katz, and also on solicitation and wearing steward's buttons, and some grievances.

Q. Just continue. A. So Bobrow stated that he thought that the discharge of Sam Stone and Bob Katz had an effect

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Raymond Kahler—For Board—Direct

on the men in the shop, and that it would tend to cause disharmony and cooperation in the shop—

Q. Do you mean disharmony and "cooperation"? A. Disharmony and disruption generally.

Q. Continue, please. A. The statement was made by a member of management—I do not know who it was—but they asked what would these men do if they were reinstated, and Mr. Bobrow stated that they would work.

719

Trial Examiner Hektoen: I think if a question were asked from time to time, it would speed matters up a lot, Mr. Rose.

Mr. Rose: All right.

By Mr. Rose:

Q. Was the question of soliciting mentioned? A. Yes, it was. Bobrow brought up that Sam Stone was discharged for solicitation, and that there was a lot of solicitation going on around the shop, and he mentioned specific instances where a lead man or someone in his shop had come around asking the workers to buy a book, and also that people were soliciting in the shop for tickets to functions, such as dances and baseball games.

720

Q. Do you recall whether he mentioned any other instances of solicitation? A. He also mentioned solicitation for group insurance in the plant, and solicitation for the RSO.

Q. Was the question of the wearing of the steward's button mentioned? A. Yes, sir, the question of the steward's button was brought up, and Mr. Bobrow stated that he thought we had a perfect right to wear the steward's button in the shop, and Mr. Kress then stated that wearing the steward's button in the shop was misrepresentation, because of the fact that we were not stewards in the Republic Aviation Corporation.

Mr. Bobrow then stated that "We may not be stewards in Republic Aviation Corporation; so far as the company is concerned, but we are union stewards, and we were so designated", and that we had a right to wear the steward's button.

And he also brought out that the volunteer firemen had a right to wear a volunteer fire badge in the shop, and members of different lodges or organizations wore their emblems of the organizations.

Mr. Kress stated that he had no objections to wearing of a plain CIO button in the shop, but he did object to wearing a steward's button in the shop.

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Q. Do you recall whether there was any discussion about grievances? A. Mr. Bobrow stated that he thought that if we had some sort of a grievance set-up in the shop, that it would tend to make for better production and harmony in the shop, and Mr. Wilson stated, I think, at that time that the grievance procedure in the shop was very good, and he explained the system, and if you had a grievance, you were to take it to your lead man, and if it could not be settled with the lead man, you were to take it to the foreman, and in that case, if it could not be settled, you were to take it to the supervisor, and so on up until the grievance was settled.

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Q. Do you recall anything else which was said on that subject? A. Of grievances?

Q. Yes. A. I don't recall.

Q. How did the meeting end? Do you recall Mr. Kahler? A. Mr. Bobrow said to Mr. Kress, "What do we do now?"

And Mr. Kress says, "You go back to work," and with that Mr. Kress asked Bobrow, "Do you intend to wear your steward's button?"

And Bobrow said, "Yes, I do," and he asked me if I intended to wear my steward's button, and I said, "Yes, I do, too."

724

Raymond Kahler—For Board.—Direct

With that Mr. Lasker got up, and he said "I want to give you fellows a final warning, that if you are seen in the shop with your steward's buttons on, you will be discharged—in the shop or on company property."

Q. That was what Mr. Lasker said? A. Yes, sir.

Q. Did you continue to wear your steward's buttons that day in the shop? A. Yes, I did.

Q. Were you discharged that day? A. I was.

Q. After the meeting which you just described? A. Not immediately after, but it was around 20 minutes to six.

725 Q. But it was after the meeting? A. Yes.

Q. Who was the spokesman for you and Mr. Bobrow at the meeting about which you have just told us? A. Mr. Bobrow.

Q. Do you recall any solicitation for Republic Service Organization in the plant, while you were employed? A. Yes, I do.

Q. When? A. I should say roughly it was around October 1942.

726 Q. Do you recall who did the soliciting? A. I was approached by my timekeeper, Mr. Harold Lyons, I think his name is, and while he was taking the time he asked me if I would like to become a member of the RSO, and he stated the program to me and told me the benefits of it, and told me that the donation was one dollar, or whatever you felt you wanted to give, but no less than one dollar.

So I gave him a dollar, and when he came back he handed me a little card, stating that I was a contributor to RSO, and also he gave me an RSO button.

Q. What time of the day did this incident occur? A. This happened during working hours.

Q. Did Mr. Lyons ever solicit you for anything else? A. Yes, he did. He solicited for tickets to baseball games. In fact, I bought them from him on two occasions.

Raymond Kahler—For Board—Direct

727

Q. When was that? A. That was sometime during the baseball season last summer.

Q. Sometime during the summer of 1942? A. Yes, sir.

Q. Did you actually pay him the money when he solicited? A. Yes, I did.

Q. Was that on one occasion that you bought two tickets, or on separate occasions? A. I bought two tickets on one occasion, and I don't remember whether I bought one or two tickets on another occasion.

Q. What time of the day did those incidents occur? A. One occasion I recall was during working hours, because he was taking the time and he asked me if I would like to buy a couple of tickets for the baseball game and help out,

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I don't know whether it was for the benefit of the RSO or Welfare Fund, or what, but he asked me if I would like to help out, and I purchased two tickets from him.

Q. Was that occasion during working hours? A. Yes.

Q. Do you recall whether the other occasion was during working hours? A. I don't recall.

Q. The other occasion was in the plant, was it not? A. Yes.

Q. When Mr. Lyons solicited you and sold you the tickets, did he have any tickets in his hands, or did he have them in his pockets, so far as you can recall? A. He had them in his hand, when he gave them to me.

729

Q. Did he have more than the one which you bought? A. Yes.

Q. Did he have a batch of tickets? A. Yes.

Q. About how big a batch, if you can estimate for us? A. I would say about that thick (indicating).

Q. About an inch? A. About one-half inch or a little more.

Q. Was that on the first occasion which you mentioned or the second occasion? A. It was on the occasion that I purchased the two tickets from him.

730

Raymond Kahler—For Board—Direct

Q. Were you ever solicited for any purpose by your lead man? A. I was not solicited by my lead man directly, no. I purchased two tickets from the lead man for a dance that was run by 40 shop.

Q. When was that? A. That was sometime in October.

Q. 1942? A. 1942.

Q. Who was the lead man from whom you purchased the tickets? A. The lead man was Frank Geyer, in 40 shop.

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Q. Where were you when you and this lead man asked you to purchase the tickets? A. Where was I?

Q. Yes. Where did you buy these tickets from the lead man? A. I bought them from his desk, his bench.

Q. Do you mean where he worked? A. Yes.

Q. Do you recall whether it was during working hours? A. Yes, it was.

Q. Now how on that occasion did you know that this lead man had tickets for the dance? A. A friend of mine had purchased two, and he wanted me to go along with him, and he said, "If you want tickets for the dance, you can get them from Frank Geyer, the lead man."

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Q. Did you pay Mr. Geyer the money when he gave you the tickets? A. Yes, I did.

Q. Have you seen any sale of tools in the plant? A. Yes. Practically every morning, as I come in the plant, in the northwest part of the building, there was a fellow, I think he was a mute, with a tool display set out on a table, and as the people came in the plant they could purchase tools from him.

Q. Where was that? A. That was the northwest part of the building.

Q. Northwest part of what building? A. Of building No. 17 of République Aviation.

Q. When have you seen these tools spread out on the

Raymond Kahler—For Board—Cross

733

bench? Before work or during working hours? A. It was before work; but I should say it was between 7:20 and 8:00 o'clock.

Mr. Rose: You may examine.

Cross examination by Mr. Rubenstein:

Mr. Rubenstein: Go ahead.

Mr. Lumbard: You first, Mr. Rubenstein.

Mr. Rubenstein: No questions.

By Mr. Lumbard:

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Q. The employees in the plant have to furnish their own hand tools, don't they, Mr. Kahler? A. The employees?

Q. Yes. A. Yes, they do.

Q. And it was tools of that kind which were being displayed by this man? A. That is right.

Q. Tools which the employees would have to furnish themselves? A. That is right.

Q. Can you state about when it was that you became a member of the RSO? A. I can't state the exact date, but—

Q. Was it shortly after you started working for the company? A. No. I should say it was around in October 1942.

735

Q. And I suppose you bought the baseball tickets last summer during the baseball season? A. I did. I bought them, but I never used them.

Mr. Lumbard: I move to strike out, "I never used them." That is not responsive.

Trial Examiner Hektoen: It may be stricken.

Mr. Rose: May I hear the question and answer?

Trial Examiner Hektoen: Read the question and answer, please, Mr. Reporter.

(Record read.)

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*Raymond Kahler--For Board--Cross**By Mr. Lumbard:*

Q. And this dance that the 40 shop was giving, that was October of last year? A. Around that time.

Q. You testified, I believe, that Mr. Kress told you there was no objection to the wearing of plain CIO buttons in the plant. Do you remember that? A. Yes, he did.

Q. And you have seen plain buttons worn around the plant, have you not? A. No, I do not think I have.

Q. Are you sure of that? A. Quite sure.

737 Q. You were present at this meeting on the 13th of January? A. Yes, I was.

Q. Up to that time had you been a member of the organizing committee? A. Up to that time?

Q. Yes. A. Yes.

Q. Now, did you spend some time at this meeting on the 13th of January? A. (No response.)

Q. You were there during the evening, were you not? A. Yes.

Q. You were there during the whole meeting? A. I was there.

Q. Will you tell us, please, exactly what happened at that time? A. In what respect?

738 Q. Well, what happened at the meeting from start to finish?

Mr. Rose: I will object to that as irrelevant and immaterial.

Trial Examiner Hektoen: On what ground?

Mr. Rose: I do not think a complete description as to the entire meeting is material.

Mr. Rubenstein: I join in the objection.

Trial Examiner Hektoen: You say you were elected at that meeting?

The Witness: Yes.

Trial Examiner Hektoen: Now, what Mr. Lumbard wants to know now is how that came about.

Raymond Kahler—For Board—Cross

739

Will you give it to us in as few words as possible, and yet not leave anything out?

The Witness: Well, all I can say is that I was nominated and elected at the meeting.

By Mr. Lombard:

Q. Who elected you? A. The membership.

Q. The entire membership? A. The people who were at the meeting.

Q. Those were employees from all over the factory?

A. I just can't remember from what part of the factory they came.

Q. Did they come from the different shops, the different departments? A. They might have been from different departments.

Q. Was there any people there from your department?

A. Yes, there was.

Q. About how many?

Mr. Rubenstein: I object to that as irrelevant and immaterial.

Trial Examiner Hektoen: He may answer, if he knows.

The Witness: I couldn't say offhand.

By Mr. Lombard:

Q. About how many were present altogether? A. I should say about 30 or more.

Q. And did that entire group vote on your election? A. Yes.

Mr. Rubenstein: I would like to have it understood that my objection goes to this entire line of questioning and to the previous ones, as to how many were there.

Trial Examiner Hektoen: You may have a standing objection to the entire line of inquiry.

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*Raymond Kahler—For Board—Cross**By Mr. Lumbard:*

Q. Now, for what part of the plant were you elected steward? A. I didn't get the question.

Trial Examiner Hektoen: Read the question, Mr. Reporter, please.

(Question read.)

The Witness: 01 shop.

By Mr. Lumbard:

743

Q. Just for that shop? A. Yes, sir.

Q. I believe you said you were elected a shop steward. Is that right? A. Well, I was elected a steward.

Q. Which was it? You said "shop steward", on your direct examination? A. Well, I was elected a steward to represent the members of the union in that particular shop.

Q. Were you on the day shift at that time? A. Yes.

Q. How many people were working in the shop altogether? A. My particular shop?

Q. Yes. A. Or in 01 shop?

Q. The 01 shop is the shop for which you were elected; is it not?

744

Mr. Rubenstein: I object to that as irrelevant and immaterial, and also that the witness could not possibly know the exact number of people working in the shop on that day.

Mr. Lumbard: The other witnesses have been able to give us some idea.

Trial Examiner Hektoen: Just a minute. He may answer, if he knows.

Do you have the question in mind?

The Witness: Will you read the question, please?

Trial Examiner Hektoen: Read the question, Mr. Reporter, please.

(Question read.)

The Witness: Oh, roughly, I should say around 600.

Mr. Rubenstein: Mr. Examiner, I thought the company objected to giving specific answers when Mr. Rose asked the question as to the number of people in a certain department, on the ground that it was a military secret. I wonder if it has become a non-military secret since two days ago?

Trial Examiner Hektoen: Are you making a further objection?

Mr. Rubenstein: Yes.

Trial Examiner Hektoen: Same ruling.

Mr. Rubenstein: Exception.

By Mr. Lumbard:

Q. When did you get your steward's button? You say you first wore it on the 26th of January? A. That is right.

Mr. Rubenstein: Objected to on the ground that it is irrelevant and immaterial as to when he got it.

Trial Examiner Hektoen: He may answer.

The Witness: Got it sometime after January 13th, but I don't remember when.

By Mr. Lumbard:

Q. Well, was it just shortly before you put it on? A. No.

Q. Was it at the meeting on the night of the 13th? A. No.

Q. You heard Mr. Bobrow say that he got his the day before. Do you remember that? That he got his on the 12th of January? A. I don't recall.

748

Raymond Kahler—For Board—Cross

Q. You don't recall his saying that? A. No.

Q. Did you get yours the day before the meeting on the 13th? A. No.

Q. Where did you get it?

Mr. Rose: Objected to as irrelevant and immaterial as to where he got it.

Trial Examiner Hektoen: He may answer.

The Witness: I got it from union headquarters.

By Mr. Lombard:

749

Q. Did Mr. Bobrow give it to you? A. No, I don't think he did.

Q. Was it in a box which was on the table, or something of that sort?

Mr. Rubenstein: I object. That is the same thing I objected to before.

Mr. Rose: Same objection.

Trial Examiner Hektoen: Same ruling.

Mr. Rubenstein: Exception.

By Mr. Lombard:

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Q. Was it in a box on a table at union headquarters?

A. I don't think so.

Q. You don't seem to be very sure about that answer.

Mr. Rose: I object.

By Mr. Lombard:

Q. Where was it? Where did you first see the button which you got? A. Where did I first see it?

Q. Yes. A. I think it was given to me.

Q. Who gave it to you? A. I don't recall.

Q. Was it somebody at the union headquarters? A. Yes.

Q. Now did you get some instructions as to what you were to do as a shop steward? A. I don't remember, whether I did receive instructions or not, but I had a general idea.

Q. You say that you don't know whether you received instructions? A. I can't recall.

Q. You can't recall ever getting any instructions? Is that it? A. I don't recall.

Q. You first wore your button, I believe you testified, on the same day that you were discharged? A. That is right.

Q. Did you talk to someone about your wearing your button before you actually wore it?

Mr. Rose: Objected to as immaterial.

Trial Examiner Hektoen: Same ruling. He may answer.

The Witness: Yes, I think I did.

By Mr. Lumbard:

Q. To whom did you speak? A. I think I spoke to Mr. Bobrow.

Q. Do you remember where it was? A. No, I don't.

Q. Do you remember when it was? A. It was prior to January 26th. I know that.

Q. Was it the morning of that day? A. No, it was not.

Q. Was it the night before? That would be the 25th. A. I don't recall.

Q. Was it at any time the day before, that is, at any time during the day of the 25th? A. I don't think so.

By Mr. Lumbard:

Q. In fact, you don't remember when it was? A. I just don't recall when it was, no.

Q. You testified, I believe, that you were a member of the organizing committee of the union? A. No, I didn't.

754

Raymond Kahler—For Board—Cross

Q. Well, were you? A. Yes, I was.

Q. Did you become a member of that committee shortly after you became a member of the union? A. Sometime later.

Q. And I think you testified that you became a member of the union in October 1942? A. That is right.

Q. Could you tell us when you became a member of the organizing committee? A. Around November sometime.

Q. And you testified that you passed out cards, and I take it that was application cards for joining the union?

755 A. I don't think I did.

Q. You don't think you did? A. No, sir.

Q. You said you attempted to obtain members. Do you remember that? A. I attempted to obtain members?

Q. I thought you said that when you testified. A. I didn't testify to that effect.

Q. Well, what is the fact? Did you attempt to obtain members for the union? A. Yes, I did.

Q. What else did you do for the union? A. I distributed leaflets, attended meetings, and tried to help the union grow.

Q. Did you try to sign up members for the union? A. Yes.

756 Q. Did you sign some up? A. Yes.

Mr. Rubenstein: I object to that as irrelevant and immaterial as to whether he did sign some up or not.

Trial Examiner Hektoen: The answer may stand.

By Mr. Lombard:

Q. And you did all these things before the meeting on January 13th? A. Before the meeting?

Q. Yes, between November and January 13th, that is what you were doing for the union? A. Not only between November and January 13th, but up until January 25th.

Q. That is exactly what I wanted to know. You kept on doing the same thing? A. In some respects.

Q. You say "in some respects". Were there some respects in which you did some thing or some things differently, after the meeting on January 13th? A. Yes.

Q. What were they? A. I wore a steward's button.

Q. You did not wear that until January 26th. A. I wore it the 26th.

Q. What else was there which was different? A. (No response.)

Q. There was not anything else which was different, was there? A. In what respect? 758

Q. In any respect. You just kept on doing the same things, hadn't you? A. I kept on doing the same things, yes, but people knew that I was a union man.

Q. You mean you wore a union button? A. No, I did not wear a union button.

Q. How did they know that you were a union man? A. Because I made it known.

Q. You told people? A. Yes.

Q. People in your shop knew it? A. Yes.

Q. You had told people before the 13th of January that, had you not? A. I may have.

Q. Well, you must have, if you tried to sign them up. Is not that right? A. I didn't have to tell them that; if I tried to sign a man up, he would naturally take it for granted. 759

Q. Yes, certainly. You were not making any secret of it? A. No.

Q. And you did tell people before the 13th that you were a member of the union? A. To the best of my knowledge.

Q. Employees in the plant? A. Yes, sir.

Q. This talk which you had with Mr. Kress and Mr. Lasker and Mr. Miller and Mr. Bobrow on the 26th of January, Mr. Kahler, you and Bobrow just walked into Mr.

760

Raymond Kahler—For Board—Cross

Kress' office and arranged with him for the meeting; is that what happened? A. Which meeting?

Q. Well, you testified here about some meeting which you had on the 26th of January. A. Yes.

Q. And I think you told us who was present. Mr. Kress was there; is that right? A. That is right.

Q. Mr. Laaker? A. Yes.

Q. Mr. Miller? A. Mr. Miller?

Q. I mean Mr. Wilson. Excuse me. A. Yes.

Q. And Mr. Bobrow? A. Mr. Bobrow.

761

Q. And yourself? A. Right.

Q. Now you and Bobrow arranged for that meeting with Mr. Kress, did you not? A. Yes.

Q. Or you had some talk with him about it, and as a result of that you had this meeting later in the day? A. Yes.

Q. You had no trouble walking in to see Mr. Kress about this matter? A. That was lunch time.

Q. You just walked into his office, didn't you? A. He was not present.

Trial Examiner Hektoen: What did you say?

The Witness: We walked into his office.

762

By Mr. Lombard:

Q. That is right. Later in the day, when you had this meeting, one of the things which you and Bobrow talked about was Katz's discharge? A. Bobrow talked about it.

Q. Bobrow talked about it? A. Yes.

Q. But you listened and you heard what went on? A. I heard some of the conversation.

Q. And didn't you ask if the company would reinstate? A. I didn't ask.

Q. Well, when I say "you"; I should have said Bobrow. Did Bobrow ask if the company would reinstate Katz? A.

Bobrow asked for the reinstatement of Katz and Sam Stone.

Q. And Stone? A. Yes, sir.

Q. And of course you knew that Katz had been fired for wearing the steward's button? A. Yes, sir.

Q. Now, didn't someone in the company want to know, and didn't they ask at this meeting, whether Katz would continue to wear the button, if he would be employed again? A. I don't think so.

Q. Well, they wanted to know if you and Bobrow were going to continue to wear the button, did they not? A. Yes, they did.

Q. Do you mean to say that they did not ask whether Katz was going to wear the button?

Mr. Rose: Objection,

Trial Examiner Hektoen: On what ground?

Mr. Rose: Argumentative.

Trial Examiner Hektoen: He may answer.

The Witness: Did they?

By Mr. Lumbard:

Q. Yes.

The Witness: Read the question, Mr. Reporter, please.

(Question read.)

The Witness: Not to the best of my knowledge.

By Mr. Lumbard:

Q. All you and Bobrow said about Katz was that if he was employed again, he would work? A. That is right.

Q. Mr. Kahler, you testified that you bought tickets for two separate baseball games? A. Yes.

Q. Can you place for us a little bit more definitely than you have, when it was that you bought those tickets, or

766

Raymond Kahler—For Board—Cross

when the games were to be held? A. I can't recall offhand, no.

Q. Do you remember what teams were going to play those games? A. I wasn't so much interested in the teams playing the games, and I bought the tickets merely to do my part.

Q. You don't even know what teams were going to play? Is that right? A. That is right.

Q. Or where they were going to play? A. I know they were playing at Bethpage, somewhere:

767

Q. Somewhere? A. Yes.

Q. You did not know the ball park? A. I am not that much interested in baseball.

Q. You don't remember a thing what the ticket said about the game? A. I know they were for a baseball game to be held at Bethpage.

Q. What price was the ticket? A. 44 cents.

Q. Apiece? A. I am quite sure.

Q. You are sure? A. 40 or 44.

Q. You are not sure of that, either? A. I am sure it was 44.

768

Q. Did you buy those tickets in the shop office, Mr. Kahler? A. No, sir, I bought them at my bench.

Mr. Lumbard: That is all.

Trial Examiner Hektoen: Any further questions?

Mr. Rose: No questions.

Trial Examiner Hektoen: Mr. Rubenstein?

Mr. Rubenstein: No.

Trial Examiner Hektoen: Thank you, Mr. Kahler.

(Witness excused.)

Mr. Rose: I am advised that the Respondent will stipulate that the charging union is a labor organization within the meaning of Section 2, sub-section

(5) of the Act, as alleged in paragraph 4 of the complaint.

Trial Examiner Hektoen: Do you so stipulate, Mr. Lombard?

Mr. Lombard: We so stipulate.

Trial Examiner Hektoen: All right.

Mr. Rose: At the beginning of the case the employment records were marked for identification. I intend to offer these employment records, some of them, in evidence. I will offer them solely as records produced by the company, and indicating the records kept by the company in connection with these claimants.

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The first of the documents is marked Board's Exhibit 3-A.

Trial Examiner Hektoen: Well, we have them all marked heretofore.

Do you have any objection, Mr. Lombard?

Mr. Lombard: No objection.

Trial Examiner Hektoen: Very well. They will be received in evidence and marked Board's Exhibits 3, 3-A, 4, 4-A, 5, 5-A, 6, 6-A, 7-A to D and 8-A to D.

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(Thereupon the documents referred to were received in evidence as Board's Exhibits 3, 3-A, 4, 4-A, 5, 5-A, 6, 6-A, 7, 7-A to D, 8-A to D.)

Mr. Rose: I did not intend to offer all of them. I don't know that I need the applications for employment.

I will work that out with counsel for the Respondent.

Trial Examiner Hektoen: The Board has marked the Rules book which is not in evidence. Do you want that to be in evidence?

Mr. Rose: I did not intend to offer that.

Trial Examiner Hektoen: All right.

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Arthur Clements—For Board—Direct

Mr. Rose: I think the relevant portion was read by the witness when he was on the stand.

As I indicated off the record this morning, I have this witness who is not here. I expect a report as to his whereabouts at 2:30, or rather I hope he will be here not later than 2:30. About one o'clock someone was on his way to the witness' home.

Trial Examiner Hektoen: Well, we will recess until 2:30.

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(Recess taken until 3:10 o'clock p. m.)

Trial Examiner Hektoen: The hearing will be in order.

ARTHUR CLEMENTS was called as a witness by and on behalf of the National Labor Relations Board and, being first duly sworn, was examined and testified as follows:

Trial Examiner Hektoen: What is your name?

The Witness: Arthur Clements.

Trial Examiner Hektoen: Where do you live?

The Witness: I live on North Broadway and Delaware Avenue, Massapaqua.

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Direct examination by Mr. Rose:

Q. Did you work for Republic Aviation Corporation?

A. Yes, sir.

Q. When did you start to work for that company? A. May 22, 1942.

Q. Until when did you work for that company? A. Until February 4, 1943.

Q. Were you discharged or did you quit on that day? A. I quit myself.

Q. On February 4 did you work on the day shift or night shift? A. I was only on the day one month; I was always on nights.

Q. On the date I mentioned were you working on the night shift? A. Yes, sir.

Q. Who was your supervisor? A. A man by the name of Craig.

Q. Do you know his first name? A. I think they called him James; I am not sure. I think James Craig.

Q. But you know his last name was Craig? A. Yes, sir.

Q. Tell us what happened on that night of February 4, 1943. A. All I can say is that I had been constantly, for the hours I am putting in, I am getting hit up for money, for donations all the time, and it seems as though I was just wasting my life working and getting nowhere, besides giving back donations; so I got fed up, and so I told them if they don't stop hitting up on me, I says I was going to quit; and so I quit the job, that was all.

776

Q. That night did someone ask you something? A. I was hit up four times when I got my pay envelope; as soon as I got my envelope, it wasn't even opened yet on Thursday night, as soon as I got it from the paymaster—

Trial Examiner Hektoen: Let's start with the time you got your envelope. What happened?

The Witness: One of the fellows by the name of Joe, a bench worker, he come over to me and asked me for two dollars and a half.

777

I says, "What is this for this time?"

He says, "To give the lead man a party."

I says, "What lead man?"

Some says, "Red."

I says, "He is out as far as I am giving him a party."

He says, "Why?" "What is the matter with Red?"

I says, "I have asked him a dozen times about a nickel increase."

I says, "I wasn't giving anything"; I says, "Anybody else I would throw a party for but not Red."

778

Arthur Clements—For Board—Direct

He went away and come back again after a while and says, "Are you going to donate for that party for Red?"

I says, "No."

Then I seen another fellow leaning over, and he says, "How about giving a dollar?"

I says, "I would not even go to the party where Red is."

He says, "How about giving a dollar for the party for Red?"

779

I says, "Nothing doing."

It was all the time, chipping in buying wrist watches and all that kind of stuff, so I just quit.

By Mr. Rose:

Q. You say after Joe spoke to you another man spoke to you? A. Yes. You see, another fellow named Tracy worked there and I used to pick Tracy up and give him a ride to work, and he evidently thought Tracy was a friend of mine, and if he let Tracy come over he would get the two and a half dollars, and no matter who come, I says, "I give no two and a half dollars."

780

Q. Did Tracy come over to you? A. Yes. He took a paper that had collections, had two and a half dollars on it. He says, "Come on and put your name down."

I says, "No, nothing doing."

Then Joe come back again. The fourth time he come back I just locked the box. First I went to Craig; first, I went to the tool crib and took out all of the tools; they took out their tools and I took mine out and sealed the box and I quit.

Q. How many times did Red speak to you that night? A. Red himself?

Q. Yes. A. It was a party for him.

Q. I don't mean Red; I meant Joe. How many times did Joe speak to you? A. Three times.

Q. How many times did Tracy speak to you? A. Once.

Q. You say when they came over, both of them, he had— A. A yellow paper with names.

Q. He had a yellow sheet of paper with names? A. A lot of names. Then Tracy come back and Joe was with him, but he left Tracy.

I was doing bench work; I had been away from the fuselage where I was riveting, and I was doing this bench work sort of in front of my bench, facing; so I just got fed up and I quit.

Q. When Tracy came over Joe was with him; is that right? A. That is right.

Q. Who held the piece of paper, do you remember? A. Tracy had it then.

Q. Did all of these conversations take place in the plant while you were working? A. Yes, sir.

Q. After they spoke to you and you say you decided to quit, where did you go? A. I went to the supervisor's office.

Q. Who was there? A. A fellow by the name of Craig, but he wasn't there then.

Q. Did you see Craig there that night? A. I waited for him. I wanted to let him know I was quitting.

Q. When you finally saw him did you see him in the office? A. I was standing outside the office waiting for him. When he came he brought me in his office.

Q. When you got into the office did you have a conversation with Craig? A. I did.

Q. Tell us what you told him and what he told you. A. He says, "What is the matter, Clements?"

Q. I said, "I am fed up on this business of being hit up for money. I am trying to pay off the place I am buying." I says, "I need every dollar, with seven kids, and it is a hard straggle, and I am putting in all of this time in this plant, all night and only four nights off for a year, and I have to work to eight o'clock, 13 hours a night—"

784

Arthur Clements—Far Board—Direct

Q. Just confine yourself to what you told Mr. Craig.
A. I told him I was fed up.

Q. Yes? A. He said, "Go back and forget about the whole thing."

Another fellow came over, and he says, "We are putting in for the party, we will put in for you for the party. We want you to come to the party."

Trial Examiner Hektoen: After you were told to go back, did you go back?

785

The Witness: No, sir. I decided I wasn't going to go back and be hit up for money.

Trial Examiner Hektoen: What did you tell Mr. Craig?

The Witness: I told him I wasn't going back.

Trial Examiner Hektoen: Then you left his office?

The Witness: Yes, sir.

Trial Examiner Hektoen: Then where did you go?

The Witness: From there I had to go return my tools.

786

Trial Examiner Hektoen: All right.

By Mr. Rose:

Q. Who was it that suggested that they lay out the money for you? A. One of the men at the bench, one of the fellows working, and I worked with him.

He said they know that I got a big expense and a big family, and he said they should not be hitting up Clements, because I am trying to buy a little farm.

When Joe was doing the collections he got excited about it and he wanted to lay it out.

He says, "Suppose you come to this outfit as a guest?"

They wanted me to come and forget about the whole matter.

Q. Who suggested laying out the money for you? A. I believe it was one of the fellows that wanted me to come back to work. They said, not to get excited and not to quit my job.

Q. Who said that? A. Well, there were so many all around, I can't remember. Someone remarked "Clements, don't be foolish. Don't quit your job."

Q. Going back to the conversation with Mr. Craig, did Mr. Craig say anything else? A. Just forget about the whole thing and go back.

Q. Did he say anything else as far as you can recall now? A. There were so many things said that night that I can't remember. 788

I just got out of bed. I am handling steel for Rangers, and I can't seem to think. I can't recall everything that was said.

Q. Do you recall the word "buck" was mentioned? A. Buck?

Q. Yes. A. That I don't know. I am so tired I can't hardly think. They got me out of bed, get me down here. Something about a buck, you say?

Q. Yes. A. I can't recall right now.

Q. Do you recall when you were in Mr. Craig's office anyone saying, "Well, go back and give a buck"? A. Give a buck, yes. I thought you meant somebody by the name of Buck. 789

Q. No. A. Yes, "Go back and give a buck and forget about it."

Q. Who said that? A. Mr. Craig told me to go back and give a buck.

I thought you meant somebody's name.

Q. After the conversation with Mr. Craig, did you check out? A. Yes, sir.

Q. And quit the plant? A. Yes, sir.

790

Arthur Clements—For Board—Direct

Q. Had you been solicited prior to that time? A. For what?

Q. For any parties or dances? A. Yes, I had been hit up there a lot of times. When I was in the wing department I was hit up and I was hit up in the fuselage; they always hit up on me. Every week, as long as I worked in the plant, I was hit up. There wasn't a week I wasn't hit up.

791

Q. When were the collections made? A. Always after you got paid on Thursday night. Thursday night we used to get our pay.

Mr. Rose: That is all.

Mr. Lumbard: Have you any questions, Mr. Rubenstein?

Mr. Rubenstein: Mr. Clements, do you remember anyone asking you about an insurance policy?

The Witness: Yes. I got that thing with me; I had my wife give it to me.

Here is the thing I laid out good money for.

Trial Examiner Hektoen: Wait a minute. Are there any more questions? You answered that question yes.

792

Mr. Rubenstein: When about were you asked to take out insurance?

The Witness: Right away, as soon as I got the job.

Mr. Rubenstein: Who asked you?

The Witness: One of the lead men went to the fellow who was hired with me, an Italian fellow by the name of Charles Gindosi; we were both hired together in the wing shop.

Mr. Rubenstein: Do you remember the name of the lead man who spoke to you?

The Witness: That was on the day a fellow by the name of Charlie Over spoke to me, he is deaf

Arthur Clements—For Board—Direct

793

and dumb. All your work, he writes down on the bench as you answer with a pencil.

Mr. Rubenstein: He came over to you while you were working?

The Witness: He just said, "Just put down for insurance."

I didn't put it down, but I heard after if you didn't take out insurance you would not last in the company.

Mr. Whittlesey: I object to what he heard.

Trial Examiner Hektoen: Sustained.

794

Mr. Rubenstein: When he came over to you you were working on your bench?

The Witness: Yes, sir.

Mr. Rubenstein: This lead man came over to you and asked you in writing to fill out an application; is that right?

The Witness: Yes, to put in for insurance.

Mr. Rubenstein: At that time you did not, is that right?

The Witness: Right then and there?

Mr. Rubenstein: Yes.

The Witness: Right then and there I did not.

795

Mr. Rubenstein: But later on you filled out an application?

The Witness: Later on, yes.

Mr. Rubenstein: Then when you did fill it out who did you give it to?

The Witness: I won't say positively; I think it went back to Charlie Over.

Mr. Rubenstein: You gave it back to Charlie Over?

The Witness: Yes.

Mr. Rubenstein: That was the same lead man?

The Witness: Yes, the deaf and dumb fellow.

Arthur Clements—For Board—Direct

Mr. Rubenstein: Did you ever hear about the Fuselage Benefit Association?

The Witness: Yes, I did; I donated to that, too.

Mr. Rubenstein: Who collected the donations to that Fuselage Benefit Association?

The Witness: All this about donations, we used to have to give money in every week, a quarter or dimes—

Mr. Whittlesey: I object unless he identifies the person.

Trial Examiner Hektoen: Yes.

Mr. Rubenstein: Who did you give that money to for the Fuselage Benefit Association?

The Witness: Different fellows used to come around making the collections, different fellows working around the shop.

Mr. Rubenstein: Don't speak so fast, Mr. Clements, and try to answer the question I am asking you.

You say different fellows came around to collect for the Fuselage Benefit Association?

The Witness: Yes, sir.

Mr. Rubenstein: Who came?

The Witness: It used to be money turned in—

Mr. Rubenstein: Each week someone came around and asked for money?

The Witness: In the fuselage you mean?

Mr. Rubenstein: Yes, that is right.

The Witness: His name was—what is that fellow's name that got in trouble with that sabotage business up there? Ganzameyer, or something like that. He got in trouble with that sabotage; he was in trouble with Charlie Heckel. He was one. I can't think of the names of all the people. You get me all bawled up.

Arthur Clements—For Board—Cross

799

Mr. Rubenstein: Don't get bawled up.

The Witness: I am trying to think myself.

Mr. Rubenstein: He used to come over to you and ask for donations?

The Witness: Every week, yes.

Mr. Rubenstein: You used to pay how much?

The Witness: Every week different, sometimes half a dollar, sometimes a quarter and sometimes a dime. Then it jumped up.

Bill Ganzameyer, that is his name. That name finally comes to me after a while. I can't think of .800 all the names.

I donated and never got nothing. It was a lot of good money wasted.

Trial Examiner Hektoen: Just a minute.

Mr. Rubenstein: Do you know a fellow by the name of Sid Sussman?

The Witness: I do.

Mr. Rubenstein: Did he make any collections?

The Witness: Yes, you would put it in a tin box every week for bandages and iodine.

Mr. Rubenstein: Where did he make the collections?

801

The Witness: He made collections right at the bench, where Joe used to make collections every week on Thursday nights.

Mr. Rubenstein: That is all.

Cross examination by Mr. WhitNesey:

Q. Mr. Clements, I am afraid I did not hear when you were first employed by Republic. A. On May 22, 1942.

Q. And you left the job on February 4, 1943? A. Yes, sir.

Q. Is that right? A. Yes, sir.

802

Arthur Clements—For Board—Cross

Q. Now, between May 22nd, 1942, and February 4, 1943, did you get any increases in your pay? A. Yes, I got that regular nickel raise, what comes to you, to 85 cents an hour; I started at 60.

Q. Just answer the question.

When did you get this regular nickel raise? A. They always gave me that every month or so.

Q. When did you first get the raise? A. Each month.

Q. Each month? A. I got a nickel raise each month. I got a nickel.

803

Q. Did you get another nickel raise? A. I got another nickel raise, I got all the nickel raises until I got 85 cents. I started at 60.

Q. You got a nickel raise every month? A. Until I get 85 cents.

Q. Until you got 85 cents? A. Yes, sir.

Q. When did you get to 85 cents, do you remember? A. Well, they called it 75 cents and 10 per cent nights.

Q. Just answer the question. When did you get to 85 cents; do you remember? A. I can't recall. The money would be in my envelope, the increase.

804

Q. Outside of that regular nickel raise, you did not ask for that raise, did you? A. No, that used to come from the company.

Q. You asked for a raise later on, did you not? A. Yes, sir, just about two months before I quit the job.

Q. Who was your supervisor at that time? A. That was another guy that was in that trouble; he was in that trouble—

Q. Just tell me his name. A. I can't think of the name. Charlie Heckel, he was the supervisor.

Q. He was supervisor? A. Yes, sir.

Q. Did you ask him for a raise? A. Yes.

Q. Did you get it? A. No.

Q. You say that was about two months before you left the job? A. Yes.

Q. Then you kept on asking for a raise after that, did you not? A. I asked him for another raise, but then when I found out he was a hard man to do business with I didn't ask no more.

Q. You did not get it? A. No, sir.

Q. Then you transferred from that supervisor; did you not? A. Yes, I transferred on my own free will because he said nobody was allowed to talk to each other in the plant, and I asked him "Was this the Aviation Corporation or was it a concentration camp?"

Mr. Whittlesey: I ask to have that stricken as not responsive.

Trial Examiner Hektoen: It may be stricken.

By Mr. Whittlesey:

Q. You just answer the questions. A. I am telling you what is what in the plant. If you won't let me explain, I can't tell you any different; that is all.

Q. You just answer my questions. A. All right.

Q. You say you kept on asking for a raise after that time you first asked? A. You don't keep on asking all the time. You give a guy a couple of weeks, and then if you don't get it you ask again.

Q. Did you keep on asking for a raise? A. No, I didn't keep on asking for a raise. I only asked that man twice.

Q. You asked whom? A. I did ask Mr. Pinkham and he said he would give it.

Q. He did not give it to you? A. He did not give it to me.

Q. He was not supervisor at the time you left? A. Mr. Pinkham was supposed to be over Mr. Heckel, but I don't understand how they run up there.

808

Arthur Clements—For Board—Cross

Q. Just answer the question.

Your supervisor at the time you left the job was Mr. Craig, was that right? A. That was in another department.

Q. All right, let's take this one at a time.

Now, you asked Mr. Craig for a raise? A. Yes, sir.

Q. How long before you were discharged did you ask Mr. Craig for a raise?

Mr. Rose: I object.

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Trial Examiner Hektoen: He may answer. He testified to that or direct.

Mr. Rose: The question assumes he was discharged, Mr. Examiner.

Trial Examiner Hektoen: I am sorry.

Mr. Whittlesey: Read the question, please.

(Question read.)

Mr. Whittlesey: I am sorry. I beg your pardon.

The Witness: I was not discharged.

Mr. Whittlesey: Strike that question.

By Mr. Whittlesey:

810

Q. How long before you left the plant had you last asked for a raise? A. About a month.

Q. You are sure you did not ask for it the same day you left the plant? A. No, I did not ask for no raise that day.

Q. Hadn't you asked for a raise just a little before you left the firm? A. I told you about a month before.

Q. You are sure you did not ask for it nearer the time that you left? A. I am positive I did not ask because you always have to wait weeks to hear from them.

Q. You had been asking for a raise, I gather, for several months, is that right? A. I asked about three times for a raise in the length of time I was over there.

Arthur Clements—For Board—Cross

811

Q. You did not get it? A. In a year I asked three times, in a year or ten months, close to a year.

Q. You thought you should have had a raise, didn't you?

Mr. Rose: I object.

Mr. Rubenstein: I join in the objection.

Trial Examiner Hektoen: The objection is sustained.

Mr. Whittlesey: I withdraw the question.

By Mr. Whittlesey:

812

Q. Now you said that on the night you left your job you spoke to your superior, Mr. Craig, about the men asking you for money for this party; is that right? A. Yes.

Q. Had you ever spoken to Mr. Craig before about people asking you for money? A. Previous to that night, the night I quit?

Q. That is right. A. No.

Q. How long had Mr. Craig been your supervisor before you quit? A. I was in that shop about two months.

Q. Before you spoke to Mr. Craig had you spoken to anybody else in that shop about being asked for money? A. Oh, the fellows I worked with, we all spoke about it.

813

Q. I mean, did you speak to your foreman? A. No. The fellows that was fed up on giving money, that was all.

Mr. Whittlesey: I move to strike that, please.

By Mr. Whittlesey:

Q. Mr. Craig was the first man over you whom you spoke to about being asked for money? A. Yes, sir.

Q. Is that right? A. That is right.

Q. Now this insurance policy you were talking about, Mr. Clements, I wish you would just describe to me in some

814

Arthur Clements—For Board—Cross

detail and slowly, take your time, just how you came to sign up for that policy, just what was done. A. Just when I was there they said they had group insurance.

Q. Tell me who said. A. The fellow used to write, he wrote it out, the deaf and dumb lead man.

Q. This deaf and dumb man came around and write something out for you? A. He used to write on the benches. The benches were covered with paper, see? That is, within the department, and he writes down "We have group insurance. Will you sign up for group insurance? It is a good thing", he thought.

815

Q. He wrote that out? A. Yes, he wrote out everything, all our work, and we will answer, we wrote; so he wrote down that.

Q. Did he write down anything after that again? A. No. It was up to me to decide.

Q. I see. A. Then I decided through other fellows I worked with, if I didn't take it out you will get fired.

Mr. Whittlesey: I move to strike that as not responsive.

Trial Examiner Hektoen: It will be stricken.

816

By Mr. Whittlesey:

Q. You spoke about collections for bandages, and you said Sid Sussman had something to do with that. A. Yes, sir.

Q. What department were you working in at the time? A. That was in Ol shop?

Q. Ol shop? A. Yes, sir.

Q. What was Sussman? A. Just a worker like me.

Q. Just a worker like you? A. That is right.

Q. What did Sussman do? Can you tell me? A. He used to work, he worked in back of me on the bench, and on the front there was another—now, they had a drawer

and a girl worked there, a little short Italian girl; she used to have money in the drawer and Joe, he used to take the collections and he had the money in the drawer, and after he would make the collections then Sussman would go over with his key and take out a little metal box they had made with a lot of adhesive tape on it, and he would come around and play it in front of you.

The first time I ever donated I says, "What is this?" And he says, "That is for iodine", and every week you got hit. If you had no change, you would get hit for a buck. Sometimes you only had twenty dollar bills up there.

818

Q. When did this first happen, if you recall? A. That happened the first week I come in the plant and it happened every week after.

Q. Right up to the time you quit? A. To the time I quit. Not until I got fired, because I never got fired.

Q. Were you in O1 shop all the time you were with the plant? A. No.

Q. You said that happened in O1 shop? A. Yes, it happened all the time I was in there; I was in O1 shop two months, and every week it happened.

Q. After you left O1 shop it kept on happening to you? A. That night I quit. That was the last.

819

Q. It started the week when you first went into O1 shop? A. That is right, that donation.

Q. I am talking about the Red Cross. A. It is not the Red Cross.

Q. Excuse me. Money for bandages. A. Yes, it was not for the Red Cross.

Q. I have not gotten clear in my mind, Mr. Clements, how long were you in O1 shop? A. Two months.

Q. Two months? A. Yes, sir.

Q. This started as far as you are concerned two months before you left the plant; is that right? A. It was going on before I come in there.

820

Motion to Dismiss Complaint

Q. I mean so far as you know. A. Yes; they just put it in front of me every week; that is all. I would open my envelope and I would just donate, had to donate.

Trial Examiner Hektoen: As far as you were concerned you did not do that before you got in 01 shop?

The Witness: Not that tin box. I used to donate on other things before.

Trial Examiner Hektoen: All right.

821

The Witness: I don't know what happened before.

Mr. Whittlesey: That is all I have.

Mr. Rose: I have no further questions.

(Witness excused.)

Mr. Rose: That, Mr. Trial Examiner, completes the Board's testimony.

Trial Examiner Hektoen: Do you have some motions, Mr. Lombard?

Mr. Lombard: Yes. Did you rest, Mr. Rose?

Trial Examiner Hektoen: The Board has rested.

822

Mr. Rose: I said that completed the Board's testimony.

Mr. Lombard: I move to dismiss the complaint, if your Honor please, so far as the allegations, and I think that all of the allegations are violations of Section 8, sub-section (1) and (3) of the Act, having to do with interference with the right to organize and discrimination in regard to the tenure of employment.

Trial Examiner Hektoen: Well, the case seems to resolve itself into two rather important and not two simple questions:

Ott Bofinger—For Respondent—Direct

823

First is the rule against soliciting on company property, regardless of whose time it occurred on, an appropriate rule; and, second is the company concerned with whether or not people wear steward's buttons.

The company answered each of those questions in the affirmative and the Board seems to answer them in the negative.

I would not like to make a bench ruling on those questions. For that reason I do not think that the motion to dismiss can be allowed at this time. I will deny it, but I will, in the absence of anything that Mr. Rose has in mind dismiss the complaint insofar as the allegations that the Respondent vilified and disparaged the union, and I am inclined to do so so far as expressed disapproval of the union, but under all the circumstances that phrase may very well be found to have evidence to support it.

824

So to the extent that the complaint alleges that the Respondent vilified and disparaged the union, the motion is allowed; otherwise it is denied.

825

OTT BOFINGER was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

Mr. Rubenstein: Your Honor, exception goes to your ruling; is that right?

Trial Examiner Hektoen: Yes.

Direct examination by Mr. Lombard:

Q. Mr. Bofinger, are you employed by the Republic Aviation Corporation? A. Yes, sir.

Q. In what capacity? A. Sectional supervisor.

826

Ott Bofinger—For Respondent—Direct

Q. How long have you been a sectional supervisor?

A. About a year.

Q. How long have you been working at this plant altogether? A. Eight years.

Q. Before you became sectional supervisor what was your capacity then? A. I was supervisor.

Q. For how long? A. About six months.

Q. Before that what were you? A. Foreman.

Q. How long were you a foreman? A. Approximately three years.

827

Q. Of what department in the plant are you sectional supervisor? A. The fuselage department.

Q. What is the number of that department? A. Shop 50.

Q. Well, are you night as well as day supervisor? A. Yes.

Q. That was the position you held in January of this year? A. That is right.

Q. Who was your immediate supervisor in the plant?

A. Mr. Wheeler.

Q. Is a man named Wesley Sergeant one of your foremen? A. Yes, sir.

Q. I suppose your shop is divided into a number of different sections; is it not? A. That is right.

828

Q. About how many? A. About six sections.

Q. Now, do you remember in early January there was a time when one or more of your foremen brought to your attention that Sam Stone was passing out some cards? A. Yes, sir.

Q. Can you tell us about when that was? A. It was about January 8th or 10th, around that time.

Q. Around that time? A. Yes.

Q. How did you first hear about that? A. I got the report from the foremen.

Q. From one or more? A. From two foremen.

Q. What was the report? A. The report was that—

Ott Bofinger—For Respondent—Direct

829

Mr. Rose: I object.

Mr. Lumbard: Well, obviously this is going to be connected up, Mr. Examiner.

Trial Examiner Hektoen: He may answer.

The Witness: The report was that Sam Stone was handing out union membership cards.

By Mr. Lumbard:

Q. Was anything said as to where in your department that was being done? A. Yes, sir.

Q. Where was that? A. In the main alley of our department. 830

Q. Did you see any of these cards at that time? A. One of the foremen showed me a card.

Q. Did he say how he had gotten the card? A. Yes.

Q. What did he say? A. He told me one of the men gave it to him.

Q. Was that card an application card to join some organization? A. Yes.

Q. Did you have any talk with these foremen as to what they should do about this matter? A. No.

Q. Did you talk with them about what they should do; whether they should do anything or not? A. I told them to report to me whatever they find, whatever they see. 831

Q. What should they do? A. Just to report it to me.

Q. Did you yourself report it to any official in the company? A. Yes.

Q. To whom? A. I happened to be in the personal department, and I reported it to Mr. Hargreave.

Q. Do you mean you were seeing him about other matters as well? A. That is right.

Q. After seeing Mr. Hargreave, did you talk to anyone else about it? A. I also talked to Mr. Wheeler.

Q. After seeing Mr. Wheeler, did you talk to anyone else about it? A. No.

832

Ott Bofinger—For Respondent—Direct

Q. Did you talk to Mr. Wilson about it? A. I talked to Mr. Wilson.

Q. That is the Mr. Wilson who is in charge of the industrial relations department? A. That is right.

Q. Did Mr. Wilson give you any instructions with respect to what you should do in this matter? A. Mr. Wilson told me that this was soliciting, and according to our company rules, it was not allowed.

Q. Did he tell you what you should do about it? A. He told me to report to him whatever happens there.

833

Q. Now, during the next few days, did you get any further reports about Mr. Stone? A. Yes.

Q. From whom did you get these reports? A. From the foremen.

Q. The foremen in your department? A. Yes.

Q. What reports did they give you?

Mr. Rose: Same objection as before.

Trial Examiner Hektoen: Same ruling.

The Witness: They reported that there was still soliciting going on out in the shop.

By Mr. Lumbard:

834

Q. By whom? A. By Stone.

Q. Did you see any of that yourself at that time? A. No.

Q. What did you do about these reports which you received? A. I informed Mr. Wheeler.

Mr. Rubenstein: Mr. Who?

The Witness: Wheeler.

By Mr. Lumbard:

Q. Now, about Friday, January 15th, Mr. Bofinger, did—strike that.

Do you know a sectional supervisor in the company named John Doglione? A. Yes.

Q. About Friday, January 15th, did he ask you to loan him some men? A. Yes.

Q. What did he ask you to do at that time? A. He called me up and said any men we can spare, I should send down to him.

Q. Of what shop was he the sectional supervisor? A. Shop 10.

Q. What is the name of that shop? A. Sub-assembly.

Q. Was this matter of loaning men to other departments a common practice in the company? A. Yes.

Q. About how often did it happen? A. Almost every day.

Q. Do you sometimes ask other sectional supervisors to lend you men? A. Yes.

Q. After Doglione asked you to lend him some men, what did you do? A. I went to two or three of our foremen, and I asked them for some men, what they can spare.

Q. I forgot what you said about Doglione and how many men he wanted. A. He wanted about eight.

Q. Do you remember each foreman you spoke to, that is, which of those foremen you spoke to? A. Yes. I spoke to the foreman of the bottom half section.

Q. Who is that? A. Kenny Heinder.

Mr. Rose: How do you spell it?

By Mr. Lombard:

Q. H-e-i-m-l-e-r? A. That is right. He told me that he was short of men himself and could not spare any. Then I went to Mr. Sergeant. He is the foreman of the splice section.

Q. Did he say he could send you any men? A. He said they would check up on it, and whatever men he will have, he will send them up to me.

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Ott Bofinger—For Respondent—Direct

Q. For how many men did you ask him? A. I told him that we needed eight, and he should get me as many as he could spare.

Q. Did you talk to any other foremen? A. Yes. I talked to Mr. Beck. He is the foreman in the miscellaneous section.

Mr. Rose: What is the name, please?

The Witness: B-e-c-k.

By Mr. Lumbard:

839

Q. What did he say? A. He said he could spare some men, either later in the day or the following day.

Q. Now, did Sargent send you some men? A. Yes.

Q. How many men did he send you that day? A. Two.

Q. Did he send you some men besides the two? A. Later in the day.

Q. How many more? A. He gave me three men in the afternoon.

Q. That is, five altogether? A. Right.

Q. Do you remember who the two men in the morning were that he brought to you? A. Yes, they were Sam Stone and Leslie Jones.

840

Q. Did you have any talk with these men when they came to your office? A. I told them that we needed men in shop 10, and I have to loan them down to help out.

Q. What is meant by that? We have been talking about "loaning men" to these other departments. What do you mean by that? A. When a department has to put out certain parts and needs help, they call on other supervisors and ask for help, extra men to send over to help them out.

Q. How long would the men who are sent that way stay in the other departments? A. Sometimes it is just for a day, and sometimes it is for a week.

Q. But they go back to your department after a while? Is that right? A. That is right.

Ott Bofinger—For Respondent—Direct

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Q. Did you notice any button that Stone was wearing at this time? A. Yes, when he came up in the office.

Q. What button was he wearing? A. I noticed a steward's button.

Q. CIO steward button? A. That is right.

Q. Had you seen him wear that button before that? A. No.

Q. You knew that Stone was in your department, did you not? A. That is right.

Q. Now, did you then take these men to shop 10? A. Yes, sir.

Q. To where did you take them in shop 10? A. To the supervisor's office.

Q. Did you go in and talk to the supervisor? A. Yes, sir.

Q. In his office? A. In his office.

Q. That is, Doglione? A. That is right.

Q. Where were Stone and Jones when you went inside? A. Outside of the office.

Q. They stayed outside? A. That is right.

Q. What did you tell Doglione? A. I told him that I had two men now.

Q. What did Doglione say or do? A. He told me that he would take one, but he wouldn't take the other.

Q. Could he see outside of his office? A. That is right.

Q. Is there a glass panel there? A. That is right.

Q. And he looked out of it then, did he? A. Yes, sir.

Q. Then did he come out of the office with you? A. Yes.

Q. Did he talk to the men at all? A. Yes, sir.

Q. Did you ask him why he should take one man and not the other? A. No, sir.

Q. Did he say why? A. No.

Q. What did you do after that? A. I went back with Sam Stone, back to my department.

Q. What happened to Lester Jones? A. He stayed.

842

843

844

Ott Bofinger—For Respondent—Direct

Q. He stayed in that department? A. That is right.

Q. Now, when you walked back to your department, about how far was that walk, Mr. Bofinger? A. About 500 feet.

Q. Did you have any talk with Stone on the way back with him? A. Yes, Stone asked me why they don't take him. So I told him the supervisor don't want him.

Q. Did you say anything after that? A. No.

Q. Did he say anything to you about the union? A. No.

845 Q. Did he say anything about there would be a time when you would get along, or something to that effect? A. Yes, he mentioned "There will be a time when we get along very nicely", and I presume he meant the other supervisor.

Q. That he and the other supervisor would? A. Yes.

Q. Did he explain what he meant beyond those words?

A. No.

Q. Did he talk about the union at all? A. No.

Q. It has been testified to here that on that walk back—reading from page 96 of the minutes—you spoke to him and you said these words:

846 "It seems that you fellows are not making any headway whatsoever here."

Did you say those words to Stone? A. No.

Q. Then he testified that he then said to you: "to the contrary we are going to town and the union is here to stay and I feel that the company should take a different attitude towards this whole business instead of going about in an intimidation of the union members."

Did he say that to you? A. No.

Q. Or anything like it? A. No.

Q. Do you remember Stone saying anything about a labor-management council at this time? A. No.

Q. When you got back with Stone to your department, what did you do with Stone? A. I put him in the fin section.

Q. Before you put him in the fin section, had you got any word from the foreman of the fin section? A. That is right. When I came back, he explained to me that he could use men also.

Q. That was right when you got back with Stone? A. When I got back.

Q. Had you had word from him earlier in the day that he needed men? A. No.

Q. In other words, this call from Doglione came before you knew that your fin section wanted men? A. That is right.

Q. Now later that same day, Mr. Bofinger, did you notice Stone and did you see what he was doing later that day? A. Yes, he was on the job.

Q. Did you see him during the lunch period? A. On the same day?

Q. Yes. A. Yes.

Q. What did you see him do during the lunch period?

A. I saw him handing out cards during the lunch period.

Q. To whom was he handing the cards? A. Fellow workers.

Q. Where was he when he was doing that? A. In the main alley of shop 50.

Q. Was he talking to the men to whom he handed cards? A. Yes.

Q. Did he go to any other parts of the department? A. Yes.

Q. Where did he go? A. He went down to the splice section, the bottom half section.

Q. What did he do there? A. He talked to the fellows, and then he handed out cards.

Q. You saw this yourself? A. That is right.

Q. Did you observe him or did you see him go to any other place besides that? A. No.

Q. What did you do then? A. I went back.

Q. To your own office? A. Yes, sir.

850

Qtt Bofinger—For Respondent—Direct

Q. Did you have a talk with Stone after this, after lunch? A. That is right.

Q. Where was that? A. In the office.

Q. Had you sent for him? A. That is right.

Q. Now tell us what you remember about this talk with Stone? A. I first told him why he was called in, about soliciting in the factory.

Mr. Rose: What is that?

Mr. Lumbard: About soliciting in the factory.

851

The Witness: And I pointed out to him that it was a violation of the company rule, and I told him I gave him a warning, and that he may be discharged if it keeps up.

By Mr. Lumbard:

Q. Did you show him the rule? A. That is right.

Q. That is the rule in the rule book on solicitations?

A. On soliciting, yes, sir.

Q. What did he say about the rule? A. He said, "Yes, I know about the rule, but this is a different matter", and that he is allowed to do this.

852

Q. Do you mean by that, that he was talking about giving out cards? A. Giving out cards.

Q. And soliciting members? A. That is right.

Q. And he admitted that he had been doing that? A. That is right.

Q. Did he say whether or not he was going to keep on? A. No.

Q. Did he say whether he would stop? A. No.

Q. Did he say anything about you trying to stop him? A. Well—

Q. That is, did he say anything to you about your trying to stop them because you were against the union, or anything like that? A. That is right.

Q. He did say that? A. He did say that..

Q. Did you say anything to him about that? A. I told him that it would not make any difference; whether it would be for the union or not, it could be for anything, but this is still a ruling of our company.

Q. Did you at this time ask Stone to have anyone vouch for his character? A. No.

Q. Now he has testified about that talk in your office at page 98, and I will read you two paragraphs and see if you can remember any of this. (Reading):

"Then Mr. Bofinger said that he heard some reports that I wasn't getting along with some of the men, and he wanted to know more about my character, that I bring in someone from the department that could vouch about my character."

Did you say that you wanted to know more about his character? A. No.

Q. Did you ask him to bring someone from the department which could vouch about his character? A. No.

Q. And he says that he went on to say "That it was a fine time, after I had worked in the company for over six months that the company was now trying to find out about my character and if I could bring in someone from the department I felt it would be putting that person on the spot, and so he didn't say anything else after that."

Did he say anything like that? A. No.

Q. Now, did you say anything to him in this talk as to whether or not he was getting along with the men in the department? A. Yes. Stone told me that some of the men have a lot of grievances out in the shop. So I told him he wasn't getting along so well himself with his fellow workers, and Stone right away knew what I meant, and I didn't have to explain it.

Mr. Rose: I move to strike.

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Ott Bofinger—For Respondent—Direct

Mr. Rubenstein: I join in the motion.

Trial Examiner Hektoen: It may be stricken.

By Mr. Lumbard:

Q. Had you before this time known of any incident where he did not get along with men in the department?

A. Yes.

Q. Will you tell us what that incident was? A. There was one incident which we had while he was working nights, and I happened to be in the shop that night, and the second one—

857

Q. What happened there that day? A. Stone came up in the office and complained that another fellow working there had called him names, and he wants to have something done about it. So—

Q. Did you take it up with the other worker? A. I went down, and first I saw the foreman, and I asked him what happened, and the foreman told me they were arguing over a stand.

Mr. Rose: May we have names mentioned, please?

Mr. Lumbard: What?

Mr. Rose: May we have names mentioned, please?

Mr. Lumbard: If you like it, all right. I don't know whether he knows it.

858

By Mr. Lumbard:

Q. Do you know what foreman that was? A. Charlie Snyder.

Q. And he said they were arguing over a stand? A. Over a stand, over a step.

Q. Did you talk to the other worker? A. I talked to the other worker while the foreman and Stone were there.

Mr. Rubenstein: May we have the name?

By Mr. Lumbard:

Q. What is the other worker's name? A. Pucci.

Q. What did Pucci say? A. He said that he did not think very much of it because he was called names also.

Q. By whom? A. By Stone.

Q. About when did that take place? A. Oh, about 10 o'clock at night.

Q. How long before this talk on January 15th? A. Oh, I should say about a month and a half or so.

Q. Now you say there was another incident which was reported to you by a foreman, about Stone? A. That is right.

Q. Will you tell us what that was? A. That was while he was riveting with another fellow.

860

By Mr. Lumbard:

Q. Tell us what that was, please. A. He was working—that is the report I got from the foreman.

Trial Examiner Hektoen: Who was the foreman?

The Witness: Wesley Sargent. He was working with another man as a partner on riveting, and they got into an argument which the foreman had to go over and settle, and had to take the two apart. They were partners then, and he had to put Stone with another man. And the foreman found out then that the other man told Stone that he should be on the job so that he could get the work done, which Stone did not like, and they got into an argument with each other.

861

By Mr. Lumbard:

Q. Do you remember the name of this man who was his partner? A. Yes, Sam Slomowitz.

862

Ott Bofinger—For Respondent—Direct

Q. Did Stone tell you what these grievances were that were in the department? A. No.

Q. Did you give him a chance to tell you?

Mr. Rubenstein: I object to that, giving him a chance.

Mr. Lumbard: I will withdraw it.

He didn't tell him, anyway.

By Mr. Lumbard:

863

Q. Now, after this talk, Mr. Bofinger, did you make out a request for the release of Mr. Stone on January 15th?

A. That is right.

Q. What did you do with that release? A. I went up to Mr. Wheeler, superintendent.

Q. And you showed him the release? A. That is right.

Q. And after that did you and he go to another office?

A. We went to Mr. Lasker's.

Q. Who is the factory manager? A. That is right.

Q. Does he have to have your approval of such requests for release? A. That is right.

Q. And did you have a talk with Mr. Lasker about it?

A. Yes, sir.

864

Q. Will you please tell us what that talk was?

Mr. Rubenstein: I object. It is hearsay and not binding in any way on the issues here.

Trial Examiner Hektoen: Would the result be sufficient for us, that is, for your purpose?

Mr. Lumbard: Well, I think I can get at it in another way.

Trial Examiner Hektoen: Very well.

By Mr. Lumbard:

Q. I will put another question first. You talked to Mr. Lasker? A. That is right.

Ott Bofinger—For Respondent—Direct

865

Q. As a result of that talk, did he sign the release or did he not sign the release? A. He did not sign the release.

Q. And did he talk to you about Stone? A. Yes.

Q. Now tell us, please, what the talk was about Stone.

Mr. Rubenstein: Same objection.

Mr. Rose: I join in it.

Trial Examiner Hektoen: I feel inclined to sustain that.

By Mr. Lumbard:

Q. Did he give you any instructions with regard to Stone? A. Yes.

Q. Did you follow those instructions afterwards? A. Yes, sir.

Q. Now what were those instructions?

Mr. Rose: That is the same thing; is it not?

Mr. Rubenstein: I make the same objection.

Trial Examiner Hektoen: He may answer.

Mr. Rubenstein: Exception.

The Witness: Mr. Lasker told me to see for myself, and if the man is continuously doing it, or is still soliciting in the shop, I should then make out a release at the same time when I see him.

867.

By Mr. Lumbard:

Q. Did he ask you whether or not Stone had said that he was going to continue soliciting? A. Yes.

Q. What did you tell him? A. I told him from the impression of it I got, that he wouldn't take my advice.

Q. But Lasker said you should make sure yourself that he violated the order, after you told him? Is that right? A. That is right.

Q. Now, after the 15th of January, did you get further reports about Stone? A. Yes, sir.

868

Ott Bofinger—For Respondent—Direct

Q. From your foreman? A. From my foreman, yes.

Q. What were those reports?

Mr. Rubenstein: Exception.

Trial Examiner Hektoen: Exception?

Mr. Lumbard: I will withdraw the question.

By Mr. Lumbard:

Q. Did the reports have to do with Stone's passing out cards? A. Yes.

869

Q. The day after January 15th? A. That is right.

Q. Now, after that, did you have a talk with Mr. Kress?

A. Yes.

Q. Do you remember when that was? A. I was called in Mr. Lasker's office and I had a talk with Mr. Kress.

Q. Can you tell us what day that was, Mr. Bofinger?

A. It was the 14th.

Q. This is after the 15th. What day of the week was it?

A. About the 19th.

Q. That would be Tuesday? A. Yes.

Q. What position does Mr. Kress hold in the company?

A. He is assistant to the president.

870

Q. Did you have a talk with Mr. Kress about Sam Stone? A. Yes, sir.

Q. Did he give you certain instructions with regard to Sam Stone? A. Yes.

Q. And will you please tell us what those instructions were?

Mr. Rubenstein: Objection.

Trial Examiner Hektoen: Same ruling.

The Witness: I should see for myself whether Stone is keeping on doing it.

By Mr. Lumbard:

Q. Did you say whether or not you had seen for yourself? A. Yes.

Q. And what did you say? A. I seen him the day I gave him the warning.

Q. But not since that time? A. Not since.

Q. What did Mr. Kress tell you to do? A. To see for myself whether Stone is still soliciting.

Q. The next day, January 20th, did you observe Stone? A. Yes.

Q. What did you see him do on that day? A. I saw him talking to several men, sitting down with them and then handing them the cards.

Q. And do you remember about what time of the day it was? A. It was during the noon hour, lunch hour. 872

Q. Do you remember where that was in the department? A. It was in the main alley of the shop.

Q. After that did you speak to Stone? A. Yes.

Q. What did you say to him? A. I told him that he again violated our rule, our company rule on soliciting, and I told him that he would be laid off.

Q. Did he say anything to you? A. Yes.

Q. What did he say? A. Stone told me that I only did this because he is a union member, handing out union membership cards. I told him, "No, I am sorry, it wouldn't have made any difference what he was handing out, it was still soliciting." 873

Q. And after that did you make out a request for his release? A. Yes, I told him that I would make out a request, and in the meantime he could check out his tools.

Q. Did you take that request to any official in the company? A. Yes, to Mr. Wheeler.

Q. And did you take it to anyone else? A. To Mr. Lasker.

Q. And did he approve it? A. Yes.

Q. And Stone was discharged? A. That is right.

Q. I show you Board's Exhibit No. 15. Is that the kind of steward's button that Stone was wearing? A. Yes, sir.

874

Ott Bofinger—For Respondent—Direct

Q. Now, before the time that you saw him wear that button, Mr. Bofinger, did you see any other CIO buttons in the plant at any time? A. I saw some buttons in some of the other departments, but not in our department.

Q. What sized button was it, compared to that button? A. A smaller sized button.

Q. Do you remember what colors were on it? A. White, and the letters were in black.

Q. White, and the letters were in some color? A. Yes.

875

Mr. Rose: Just a minute. Read the witness' statement, Mr. Reporter, please.

(Record read.)

By Mr. Lumbar:

Q. Did those buttons say "steward" on them? A. The smaller buttons?

Q. Yes. A. No.

Q. But they said "CIO"? A. That is right.

Q. Did you ever hear of the Fuselage Benefit Association? A. Yes.

876

Q. What was that? A. Some of the fellows working in the fuselage department, they wanted to belong to it, and they put in a dime in it, and when a fellow is going in the Army, they give him a check, or if a fellow's wife has a baby, they also give him a check.

Q. How much do they give him when he is going in the Army? A. They give him five dollars.

Q. And when his wife has a baby? A. Ten dollars.

Q. Who started up this Association? A. That was at the time when Selective Service started.

Q. It was after that? A. Right after that.

Q. That would be sometime after October 1940? A. That is right. The fellows wanted—

Q. Who are the fellows, when you say that? A. In the shop.

Q. The employees in the shop? A. The employees in the shop. They felt at the time that they wanted to give something when a man is going in the Army, and they gave him, or gave them all about the same. They put a dime in once a week, and then when a man is going in the Army, or his wife has a baby, they give him a check for it, but they only get the same amount, all of them.

Q. Were you then a foreman? A. That is right.

Q. And then later you became supervisor? A. Yes.

Q. Did you take up this matter of the Association with any executive in the company? A. I didn't, but at the time when it was started, it was taken up with the personnel department.

Q. By someone else in your department? A. That is right.

Q. And did you get any word back as to it? A. At that time we were informed that it was allowed.

Q. But you never checked that yourself? A. No.

Q. Have you had any orders since then as to whether or not you should permit this— A. Yes.

Q. (Continuing) —collection of money? A. Yes, sir.

Q. What are those orders? A. I have the order now to stop it.

Q. Now, Mr. Bofinger, did you discriminate against Stone because of his union activities?

Mr. Rose: Objected to as calling for a conclusion.

Trial Examiner Hektoen: What is that?

Mr. Rose: Objected to as calling for a conclusion.

Trial Examiner Hektoen: Off the record for a moment, Mr. Reporter, please.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

880

*Ott Bofinger—For Respondent—Direct**By Mr. Lombard:*

Q. Did you at any time express your opinion to Stone about the union, Mr. Bofinger?

Mr. Rose: Objection.

Trial Examiner Hektoen: He may answer.

The Witness: No, sir.

Mr. Lombard: That is not a conclusion.

Trial Examiner Hektoen: He may answer.

881

By Mr. Lombard:

Q. Did you say "No"? A. No.

Q. Did you ever express any opinion to any employee about the union? A. No.

Q. Did you ever ask any employee if he belonged to the CIO? A. No.

Q. Or to a union? A. No.

Q. Were you ever instructed to find out what men in your shop were union men? A. No.

Q. Were you ever told what men in your shop were union men? A. No.

Q. Were you ever instructed to keep your eye on union men in your shop? A. No.

882

Q. Did you ever instruct anyone else to do so? A. No.

Q. Now, of course, after Stone wore this button on the 15th, you knew then that he was a union man, didn't you? A. I just saw the steward's button. I didn't know whether he belonged to the union or not.

Q. Did you ever in any other case, Mr. Bofinger, tell an employee not to solicit? A. Yes.

Q. And about how many cases of that kind did you have? A. Oh, several.

Q. Did the employees obey your instructions in those cases? A. Yes, sir.

Q. And were they discharged? A. No, they obeyed the rules.

Q. They obeyed the rule? A. Yes, sir.

Q. Do you remember anything about the kind of solicitation which it was that occurred in those other cases? A. At one time there was a fellow who was with the company about three years, and he was going in the Army, and they felt they wanted to give him something extra, the group he was working with, and one man came over and asked me about it, what I thought of it, and I told him, "No, we can't allow it. It is against our rule."

884

So they didn't do it.

Q. Now, can you remember any other cases at this time? A. Yes, a fellow—

Mr. Rubenstein: May I interrupt to ask for names of individuals, if possible, the previous names and subsequent names?

By Mr. Lombard:

Q. Do you remember any names, Mr. Bofinger? A. Yes, Tommy Tendler.

Mr. Rubenstein: Is that the first one?

The Witness: Yes.

885

By Mr. Lombard:

Q. You were about to tell us of another occasion. Is that the Tommy Tendler case? A. Yes, sir.

Mr. Rubenstein: Just a minute.

Mr. Lombard: He is going to tell us about Tommy Tendler.

Mr. Rubenstein: That was the first case.

886

*Ott Bofinger—For Respondent—Cross**By Mr. Lombard:*

Q. Was that the first case? A. Yes, sir.

Q. I am sorry. It is my fault. Do you remember the man in the second case? A. It was Freddie Cochran. He lost his eye. That was the same kind of case, and they wanted to make a collection.

Q. Did it come to your attention? A. Yes.

Q. What did you say? A. I told them, "No, it can't be done."

887 Q. Did they do it? A. No. The company gave Fred Cochran, gave him something from their own Welfare Fund.

Q. But the men did not raise any money? A. No.

Mr. Lombard: You may examine.

Cross examination by Mr. Rose:

Q. Did the Fuselage Benevolent Association have any officers? No.

Q. Did it have anyone who sort of headed it or ran it? A. No.

888 Q. Did it have anything such as you would call members or contributors? A. No.

Q. It had no contributors? A. It had contributors, anybody who wanted to give something.

Q. Had you been giving money to the Association? A. Yes.

Q. Didn't the Association run some social affairs? A. At one time they ran a dance.

Q. Did you go to the dance? A. Yes.

Q. Did you sell any tickets to the dance? A. How?

Q. Did you sell any tickets to the dance? A. Why, yes, I bought a ticket myself.

Q. Did you sell any? A. No.

Q. Whom did you buy the ticket from? A. The shop clerk.

Ott Bofinger—For Respondent—Cross

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Mr. Rose: Read the answer, Mr. Reporter, please.

(Answer read.)

By Mr. Rose:

Q. Now, what is the personnel change request, to which you have referred? A. Change request?

Q. Yes. Do you know what I am referring to? What is the release which you referred to? A. The release is a paper that clears an employee out through the tool crib and out of the west gate.

890

Q. How many did you sign with respect to Sam Stone? A. Two.

Q. When did you sign the first one? A. After the day I gave him the warning.

Q. How long after you spoke to him? A. About an hour after.

Q. Did you have a shop clerk? A. Yes, sir.

Q. Did you tell your shop clerk to make one out? A. Yes, sir.

Q. Did the shop clerk type it? A. That is right.

Q. And you signed it, is that right? A. Yes, sir.

Q. When did you make up your mind to discharge Stone? A. After I had a talk with him; after I gave him the warning.

891

Q. How long afterwards? A. Right after.

Q. Immediately after he left you, you decided to discharge Stone. Is that right? A. That is right.

Q. Had you seen Stone soliciting prior to that time? A. Yes.

Q. You personally had seen him? A. Yes.

Q. Prior to the time you made up your mind, you personally had seen Stone soliciting? A. That is right.

Q. Was it the same day? A. Yes.

892

Ott-Bofinger—For Respondent—Cross

Q. You had been watching Stone? A. Yes.

Q. And had you watched him on prior days? A. No.

Q. So that you never watched him soliciting prior to the 15th. Is that right? A. No.

Q. Do you mean that I am wrong, or that you did watch him?

Mr. Lumbard: He said he didn't watch him.

The Witness: I didn't watch him.

By Mr. Rose:

893

Q. So that at the time you decided to discharge him, you were relying on what you had seen him do; is that right?

A. That is right.

Q. After you signed the release, what did you do with it? A. I went to Mr. Wheeler, the superintendent.

Q. Then did you go to see anyone else? A. Mr. Lasker.

Q. Did Mr. Lasker give you instructions? A. Yes.

Q. What instructions did he give you? A. He told me to see whether Stone would do it again, after I gave him the warning, and he wanted to make sure that I would see it myself.

Q. Did you tell him whether or not you had seen it?

894

A. Yes, sir.

Q. Did you tell him you had seen it or you had not seen it? A. I told him that I gave Stone a warning after I saw it.

Q. After you saw it? A. That is right.

Q. Yet he told you to make sure you saw it? A. He told me to make sure to see whether he does it again, after I gave him the warning.

Q. When did you write out the second release? A. The day when Stone was laid off.

Q. What day was that? A. The 20th.

Q. Did you sign that one? A. Yes, sir.

Q. Does not the company have any title for what you

call "release"? Are those papers called anything? A. The release papers?

Q. Yes. A. We have no other title.

Q. No other title? A. No.

Q. Have you ever heard the expression "personnel change request"? A. Yes.

Q. To what does that refer? A. That is when you transfer a person from one department to another.

Q. Did you ever sign a personnel change request in connection with Mr. Stone's discharge? A. It is not the same paper as you make out for the release.

Q. What is the personnel change order? A. A personnel change order you can use for three different purposes.

Q. What purposes? A. One, to make a rate change; one, to transfer a person; and, one, to release a person.

Q. What is the difference between a personnel change order and a personnel change request? A. The change order or the change request?

Q. As I understand it, one is called an order and one is called a request. What is the difference? A. Well, on the personnel change order, that is when you order something, and the request, the personnel change request, is when you request a change in a rate.

Q. Does the request have anything to do with discharging a man? A. Why, yes.

Q. Who fills out the order? Do you fill out the order? A. That is right.

Q. And you fill out the request? A. That is right.

Q. Can you tell us why you have the distinctions? How do you know when to fill out an order and how do you know when to fill out a request?

Mr. Lumbard: Do we need to go into this? It has not been brought out here, whether he did one or both.

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Ott Bofinger—For Respondent—Cross

Mr. Rose: He testified that he filled out two requests.

Trial Examiner Hektoen: For releases?

The Witness: For releases.

Mr. Whittlesey: He didn't testify that he made out an order.

Mr. Kress: The exhibit will show whether he did or not.

Trial Examiner Hektoen: Are you of record, Mr. Kress?

899

Mr. Kress: I am sorry.

Trial Examiner Hektoen: You may answer the question.

Read the question, Mr. Reporter.

(Question read as follows:

"Q. Can you tell us why you have the distinctions? How do you know when to fill out an order and how do you know when to fill out a request?")

The Witness: When you fill out or when you make a change request, a release, you type it on the release. When you ask for more personnel from the employment office, you type that out on the order.

900

By Mr. Rose:

Q. In the case of the discharge of a man, you never fill out an order. Is that right? A. No.

Q. Am I right? A. That is right.

Q. When did you notice Stone wearing a steward's button for the first time? A. When he came to my office.

Q. Can you give us the date or the approximate date? A. The 15th.

Q. Did you see Stone the day before, if you recall? A. I don't recall.

Q. Now, to which occasion are you referring with re-

spect to the 15th? A. The day when I gave him the warning.

Q. No, you said you noticed Stone's button when he came to your office. Did Stone come to your office that day more than once? A. He was in my office in the morning, right after eight o'clock.

Q. When for the first time did you notice that he was wearing a steward's button? A. In the morning.

Q. Prior to the time that he came to your office, had you spoken to your foreman about the men they needed? A. Prior to the time he was in my office?

Q. Yes. A. I spoke to the foremen.

Q. Had you found out whether or not you needed any men in the department that morning? A. No.

Q. You had not found out? A. No.

Q. Prior to the time Stone came into your office that morning, had any of the foremen mentioned whether or not they needed men in their departments or sections, whichever you call it? A. No.

Q. Had you said anything about the need of any men prior to the time Stone came to your office, referring to your foremen, of course? A. No.

Q. How long did Stone remain in your office that morning? A. Well, I would say about as soon as he got there, I took him down. 903

Q. Where did you meet the other man? A. In front of my office.

Q. That was Jones? A. That is right.

Q. Then, as I understand you, you went to another shop? A. Yes, sir.

Q. What shop did you go to? A. Shop 10.

Q. And did you talk to Jones on the way to shop 10? A. No.

Q. Did you talk to Stone? A. No.

Q. When you got to shop 10, where did you go? A. I went to the supervisor's office.

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Q. What is the name of the supervisor? A. Doglione.

Q. Did you have a conversation with Doglione? A. I told him that—

Q. Just answer my question, please. Did you have a conversation? A. Yes.

Q. How long did you and Doglione talk? A. We had a very short talk.

Q. How long? Can you estimate the time? A. No.

Q. Was it five minutes? A. Less than that.

Q. Three minutes? A. About.

905

Q. Was it in those three minutes that Doglione told you he wouldn't have one of the men? Is that right? A. That is right.

Q. And he referred to Stone? A. Yes.

Q. Did he point to him? A. Yes.

Q. How did he describe Stone? A. As "that man."

Q. Did he use any other words? A. No.

Q. Then you and Doglione walked out? A. That is right.

Q. What happened as soon as you and Doglione walked out? A. I went back with Stone to my department.

Q. Did you say anything to Stone before you went back? A. No.

906

Q. Did Doglione say anything to Mr. Jones before you went back? A. No.

Q. Did you say anything to Stone before you walked back? A. I told him to go back again in our department.

Q. Was that before you started to walk back? A. That is right.

Q. What is the answer? A. Yes.

Q. But you said nothing to the other men? A. No.

Q. How long did it take you and Stone to get back?

A. Oh, I would say about three minutes.

Q. Did you have any conversation with him on the way?

A. Yes.

Q. Who spoke first? A. Stone asked me why I was taking him back. I told him the supervisor didn't want him.

Q. Did you tell him why? A. No.

Q. Had you said anything to Stone before he asked you that question? A. No.

Q. And when you got back what happened? A. When I got back to my department the foreman from the fin section told me that he needed some men.

Q. Then what happened? A. So I introduced him to the foreman of the fin section.

Mr. Lumbard: That is in your department, Mr. Bofinger? 908

The Witness: Yes.

By Mr. Rose:

Q. During the time that you have been sectional supervisor, how many men have you discharged? A. I wouldn't know.

Q. Will you speak up? I didn't get the answer. A. I wouldn't know.

Q. You have no recollection of how many men you have discharged during the time you were sectional supervisor? A. Not unless I check my records. 909

Q. Has it been more than one? A. Yes.

Q. Can you give us an estimate? A. No.

Q. When for the first time did you have any knowledge that some of the employees in the plant might have some interest in the CIO?

Mr. Whittlesey: I think that is a pretty indefinite question, how many employees.

Trial Examiner Hektoen: I suppose you want to know when for the first time did he know there was any CIO going on in the plant?

Mr. Rose: Right.

910

Ott Bofinger—For Respondent—Cross

Trial Examiner Hektoen: Suppose you put it that way to get around the objection.

By Mr. Rose:

Q. When for the first time did you have any idea that people in the plant were interested in the CIO? A. When I saw the union membership cards. That was around January 10th, 8th or 10th.

Q. Do you mean at the time that the foreman showed you the union membership card? A. Yes.

911

Q. You had no information on the subject prior to that time? A. No.

Q. Now, in the morning of the 14th of January, did you inspect Mr. Stone's work? Do you recall? A. No.

Q. You have no recollection? A. No.

Q. You have no recollection of you and Mr. Sargent examining Mr. Stone's work on that day? A. No.

Q. Now, as I understand your testimony, after you gave Sam Stone the warning on the 15th, you signed a release on that day. Is that right? A. That is right.

Q. Was that release signed by anyone else? A. Yes, it was signed by Mr. Wheeler.

912

Q. Anyone else? A. No.

Q. Was it signed on that day by Mr. Wheeler? A. Yes.

Trial Examiner Hektoen: This is the 15th?

Mr. Rose: That is right.

By Mr. Rose:

Q. Do you know whether anyone else signed that release besides you and Mr. Wheeler? A. No.

Q. You have no recollection? A. No.

Q. How long after you signed the release on the 15th did Mr. Wheeler sign? A. Oh, about a half an hour afterwards.

Q. Did you sign a second release? A. Yes.

Q. You actually put your signature on a second release? A. Yes.

Q. When was that? A. On the 20th.

Q. On the 20th? A. Yes, sir; that is right.

Q. And what other signatures were placed on the second release? A. All the signatures that were necessary.

Q. Were those signatures placed on the second release, on the 20th, too? A. Yes.

Q. And what other signatures were placed on the release of the 20th? A. Mr. Wheeler's signature and Mr. Keough and Mr. MacDonald. 914

Q. Who was Mr. Keough? A. General superintendent.

Q. Who is Mr. MacDonald? A. Assistant to the factory manager.

Q. By the way, what was done with the release of the 15th? A. It was given back to me.

Q. What did you do with it? A. I destroyed the original.

Q. You destroyed the original? A. That is right.

Q. Were copies made? A. Yes.

Q. What happened to the copies? A. I kept the copies.

Q. Do you still have the copies? A. Yes, sir. 915

Q. When you say you destroyed the original, what did you do? A. I ripped it up.

Q. You threw it away? A. Yes.

Q. I show you Board's Exhibit 8-C and ask you whether that is not the release of the 15th, Mr. Bofinger.

Mr. Whittlesey: Are you talking about the request or the order?

The Witness: This is a copy from my copy.

By Mr. Rose:

Q. This was produced by the company, Mr. Bofinger, in response to a subpoena for the personnel records. Do you

916

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care to change your answer now that I have told you that this was produced by the company? A. I don't know.

Q. I am telling you that I subpoenaed the original personnel records, including the personnel—

Mr. Whittlesey: I do not see what difference it makes what you subpoenaed. You are asking him what this is, and he is answering it.

Mr. Rose: May I be permitted to finish my question?

917

Mr. Whittlesey: I beg your pardon.

Mr. Rose: I had not finished it.

Trial Examiner Hektoen: You say you have not completed it?

Mr. Rose: No, I have not completed it.

Trial Examiner Hektoen: Complete it.

By Mr. Rose:

Q. I want to advise you, Mr. Bofinger, that I subpoenaed the original personnel records relating to Mr. Stone, including, I believe, personnel change requests and personnel change orders, and this document, Board's Exhibit 8-C, is one of the documents produced pursuant to the subpoena, and I ask you whether that makes any difference in your answer?

918

Trial Examiner Hektoen: Do you have any objection Mr. Whittlesey?

Mr. Whittlesey: I think it is entirely argumentative. If what he is getting at is that there is something wrong with the subpoena, he might ask counsel that, but if there is something inaccurate in the testimony, I do not see how this will cover it.

Trial Examiner Hektoen: Since he has said the original was destroyed, and since the record contains what appears to be the usual request slip, he may answer.

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Mr. Whittlesey: I would like to add that I believe he said that was a copy of his copy.

Trial Examiner Hektoen: Perhaps you might want to know how that appears to be in the file. Is that what you are after, Mr. Rose?

Mr. Rose: No.

Trial Examiner Hektoen: Just to cut it short, you may answer.

~~Does it change your testimony?~~

The Witness: No.

920

By Mr. Rose:

Q. Now, I direct your attention to Board's Exhibit 7-D, and ask you whether that is the second release? A. That is the second release, yes, sir.

Q. Are there any signatures on it? A. It is just type-written on here, who all signed it.

Q. There are no signatures on it? A. No.

Q. Then you did not sign the second release? A. I signed the request for the second release.

Q. Your signature does not appear on Board's Exhibit 7-D, does it? A. There is my name on there but not my signature.

921

Q. Mr. Wheeler's signature is not on it, either, is it? A. No.

Q. When was the last time you made any contribution to the Benevolent Association which you mentioned? A. It was quite some time ago; about a month, now.

Trial Examiner Hektoen: About a month?

The Witness: About a month.

By Mr. Rose:

Q. You referred to an order in that connection. When did you get that order? A. Order for what?

922

Ott Bofinger—For Respondent—Cross

Q. You referred to some order concerning solicitation for the Fuselage Benevolent Association, according to my notes. Did you? A. I received it in respect to the Fuselage Benevolent?

Q. Yes. A. An order to stop?

Q. Yes. A. That was last week.

Q. Last week? A. That is right.

Trial Examiner Hektoen: From whom did you get the order, Mr. Bofinger?

The Witness: I got the order from Mr. Wilson.

Mr. Rose: Read the answer, Mr. Reporter, please.

(Answer read.)

923

By Mr. Rose:

Q. Will you please keep your voice up? A. Yes, sir.

Q. You drop it at the end, and I don't hear you.

Now you referred to an incident relating to Mr. Stone, while he was on the night shift, and which you referred to concerning a complaint that he made. Is that right? A. That is right.

924

Q. About when was that? A. I believe it was in December.

Q. December of 1942? A. Yes.

Q. Do you have any personal knowledge of the incident, or were you telling us what had been reported to you?

A. I recall Sam Stone coming to my office—

Q. No, I am not asking you to tell us what happened. I am asking you whether you had any personal knowledge of what happened, or whether your knowledge of what happened is based on what some other men told you. Do you understand the question? A. Yes. All I know is that when I went to find out, I got the story from the foreman and also from Stone. In other words, three men were involved.

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Trial Examiner Hektoen: Who was the foreman, Mr. Bofinger?

The Witness: Mr. Snyder.

Trial Examiner Hektoen: And the other man was Pucci?

The Witness: Yes, sir.

By Mr. Rose:

Q. Had you ever been requested by Mr. Snyder to arrange for the transfer back of Mr. Stone to the night shift?

A. No.

926

Q. Had Mr. Ritz ever asked for his transfer back to the night shift? A. Ritz?

Q. Yes, sir. A. Who is he?

Q. You don't know Mr. Ritz? A. No.

Q. Who was Stone's lead man when he was on the night shift? Do you know? A. I don't know.

Q. Now, when did the other incident happen? A. That was in the day time, on the day shift.

Q. About when was it, approximately? A. It was about January, 1943.

Mr. Rose: No further questions.

927

Mr. Rubenstein: I would like to ask some questions, please.

By Mr. Rubenstein:

Q. Mr. Bofinger, how long have you been employed with Republic Aviation Corporation? A. About eight years.

Q. And you started there as what? A. As a mechanic.

Q. In the ranks? A. How?

Q. As a mechanic on the bench? A. As a mechanic on the bench and on assembly.

Q. Before Republic, where were you working, Mr. Bofinger? A. I worked for General Aviation.

928

Ott Bofinger—For Respondent—Cross

Q. General Aviation? A. That is right.

Q. As what? A. As a mechanic.

Q. How long? A. About four years.

Q. And before that? A. I worked for Fokker Aircraft Corporation.

Q. As a mechanic? A. That is right.

Q. Was there any union in either of the plants that you ever worked in, before you worked at Republic? A. No.

Q. Did you ever belong to a union? A. No.

929

Q. Did you ever tell any of the employees at Republic that you were a union man and you had no objections to unions? A. No.

Q. Now you testified as to reports that were made to you as to Sam Stone's argument on the night shift with an employee by the name of Pucci. Is that right? A. That is right.

Q. And you testified that you investigated the case. Is that right? A. Yes, sir.

Q. Can you tell us what the argument was about? A. Stone complained that he was called names by another man working in the same area where he was working.

Q. He complained to you? A. That is right.

930

Q. Did he tell you what names he was called? A. Yes.

Mr. Whittlesey: Do you insist on that?

Mr. Rubenstein: How?

Mr. Whittlesey: Do you insist on that?

Mr. Rubenstein: I want to find out what happened.

Mr. Whittlesey: All right.

By Mr. Rubenstein:

Q. Do you recall the name that he was called? A. That Stone was called?

Q. Yes. A. Yes.

Q. Will you tell us? A. Stone told me that the other fellow called him a "fucking Jew."

Q. What did you do? A. First I thought it over and I was quite impressed, and I asked Stone to come down with me and find out, and we went right over to this other man.

Q. To which other man? A. That called him the name.

Q. Yes. Then what happened? A. So I talked to the foreman and Sam Stone and this other man together.

Q. Yes. A. And I explained to them that that is no way to talk to anybody.

Q. What happened then? A. The reason he gave me is: "He called me a fucking Wop." 932

Q. Who said that? A. Pucci.

Q. And did you try to find out what brought about these name callings? A. Yes, I found out from the foreman. He told me they were arguing over a stand.

Q. And did you do anything about these name callings? A. Yes, I called the other fellow and I told Pucci that he should never at any time call anybody a name like that.

Q. You told that to Pucci? A. That is right.

Q. Did you tell it to Sam Stone? A. I asked Stone whether anything like that happened, and he said "Yes, there was quite a confusion going on for a while." 933

Q. Quite a confusion about what? A. Over the stand.

Q. Did you ask Sam whether he called Pucci any names? A. No.

Q. But you did tell Pucci not to use such names? A. That is right.

Q. You thought it improper to use such names. Is that right? A. That is right.

Q. And that is what you did? A. Yes, sir.

Q. Now you testified on direct examination that you did not think very much of it; he was just called names. If you did not think very much of it, why did you have to give Pucci a reprimand?

934

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Mr. Whittlesey: I object.

Trial Examiner Hektoen: He may answer.

The Witness: I thought if Pucci said that, that it would not be correct.

By Mr. Rubenstein:

Q. It would not be correct? A. That is right.

Q. So that you did think that it was of some importance? A. That is right.

935

Q. And you did feel that it was the fault of Pucci and not of Stone?

Mr. Whittlesey: I do not think he has testified to that.

Trial Examiner Hektoen: If he did, he may answer.

The Witness: I felt that I should hear both sides, first, before I do anything about it.

By Mr. Rubenstein:

Q. And you heard both sides? A. I heard both sides.

936

Q. And then you found it necessary to tell Pucci not to use such names. Is that right? A. That is right.

Q. Now do you know whether Sam Stone was satisfied with your action? A. I felt at the time so, and after I was finished I told the foreman to see that each man would have his proper tools and stand to work with, so that there would not be any argument.

Q. I asked you whether you felt that Stone was satisfied with your reprimand to Pucci? A. I felt that he was.

Q. You did? A. Yes, sir.

Q. Do you know whether or not Stone made a further complaint to anyone in personnel? A. I don't know.

Q. You don't? A. No.

Q. Do you know whether he ever spoke to Mr. Russell about it? A. No.

Q. By the way, did you ever have any similar complaints of name-callings in your plant? A. No.

Q. That was the only complaint which you ever had? A. Yes.

Q. You are sure of that? A. Yes, sir.

Q. Why didn't you give a bawling out to Mr. Stone for calling the other fellow names? A. I felt that when this happened, this name calling happened, I don't think Stone knew just what all was said then.

Q. Is it not a fact that Stone did not call any names? A. I don't think so.

Q. You don't think so? A. No.

Q. Now this was one of the two complaints that Stone was ever involved in. Is that right? A. Yes.

Q. And the complaint you just testified to was made not against Stone but by Stone against someone else. Is that right? A. Yes.

Q. You testified that you saw Stone soliciting about the 8th or 10th of January?

Mr. Whittlesey: He didn't testify to that. He said reports..

By Mr. Rubenstein:

Q. Is that what you testified to? A. No.

Q. You testified that you got reports that he was soliciting? A. Yes, sir.

Q. Whom did you get those reports from? A. From a foreman by the name of Sargent.

Q. When did Sargent report to you? A. About that time.

Q. Do you recall more specifically the date? A. No; about the 8th, I think.

Q. About the 8th or 10th? A. Yes, sir.

Q. Do you recall the time that a report came to you? A. No.

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Ott Bofinger—For Respondent—Cross

Q. You don't know whether it was in the morning or in the afternoon? A. It was one of the times when I got in touch with the foremen.

Q. You say it was one of the times you got in touch with the foremen? A. That is right, in the morning.

Q. Where was it? A. On the floor.

Q. On the floor? A. That is right.

Q. In the shop? A. Yes.

Q. You went over to the foreman? A. Yes.

941

Q. He didn't come to your office? A. I go to every one of my foremen.

Q. When? A. During the day.

Q. You don't know the exact time of day? A. No.

Q. Now on that uncertain day you say that you went over to Sargent; is that right? A. That is right.

Q. Do you remember where it was? A. No.

Q. You don't remember where it was? A. No.

Q. Do you remember your conversation with Sargent? A. No.

Q. You don't? A. No.

Q. But you remember that he made a complaint. Is that it? A. He told me about it.

942

Q. He told you? A. That is right.

Q. And that is the only thing you remember of that conversation? A. That is right.

Q. Did he tell you whether he saw Stone do this himself? A. Not at that time.

Q. Not at that time? A. No, sir.

Q. What did he tell you? A. He said that some of the men gave him the card, the membership card, which was handed out by Stone.

Q. Some of the men? A. Yes.

Q. Did you ask him what was the name of the man? A. He told me.

Q. He gave you the name of the man? A. Yes, sir.

Q. What name did he give you? A. He told me the name of Stone. He didn't tell me the name of the man that gave him the card.

Q. I asked you whether he told you the name of the man who gave him the card. A. No.

Q. You were not interested to find out the name of the man, were you? A. No.

Q. Did you ask him whether one man spoke to him or several? A. No.

Q. You did not? A. No.

Q. Did you see the card? A. Yes.

Q. Did you keep the card? A. No.

Q. What did you do with it? A. Gave it back to the foreman.

Q. To Sargent? A. That is right.

Q. What did you tell him? A. I told him to see what was going on, and we would let him know what he was to do about it.

Q. You told him to see what was going on and "We will let him know what to do about it?" Is that right? A. That is right.

Q. You told him to watch Sam Stone. Is that right? A. Not exactly.

Q. What do you mean by saying "What was going on?" A. If any of those cards would be handed out.

Q. You wanted him to watch whether these cards were being handed out? Is that right? A. That is right.

Q. Why did you tell him to see what was going on? A. To see whether these cards were handed out in the factory.

Q. Why were you interested to see whether they were handed out in the factory? A. Because I knew there was no soliciting allowed in the factory.

Q. You knew there was no soliciting allowed in the factory? A. That is right.

946

Ott Bofinger—For Respondent—Cross

Q. What do you call soliciting? A. Soliciting is handing out any membership cards.

Q. That is soliciting? A. Or you could sell cuff links, or most anything.

Q. Do you mean selling most anything is not soliciting? A. It is not soliciting.

Q. If one sells tickets it is soliciting? A. What is the question?

Mr. Rubenstein: Read the question, Mr. Reporter, please.

947

(Question read.)

The Witness: Yes.

By Mr. Rubenstein:

Q. If one collects contributions; is that soliciting? A. Yes.

Q. If one goes around and asks for donations, is that soliciting? A. I wouldn't know.

Q. You don't know? A. No.

Q. But if one asks for contributions, it is soliciting? A. Yes.

948

Q. That is soliciting? A. Yes.

Q. Now you knew that the Fuselage Benevolent Association was getting donations. Did you tell anyone to watch the members collecting donations for the Fuselage Benevolent Association? A. No.

Q. You did not? A. No.

Q. And that Fuselage Benevolent Association was existing for quite some time in the shop? A. Yes.

Q. And you yourself had paid to it. Is that right? A. Yes.

Q. And you did not tell anyone to watch the members or the people who were soliciting for the Fuselage Benevolent Association? Is that right? A. No.

Ott Bofinger—For Respondent—Cross

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Q. Now why, then, the first day you were told that Sam Stone was distributing cards, did you tell your foreman to watch him?

Mr. Whittlesey: I think he has answered that.

The Witness: It was something I never saw before.

By Mr. Rubenstein:

Q. Something you never saw before? A. Yes, sir.

Q. Did you ever before hear of a union? A. No.

Q. Never heard of a union?

950

Mr. Whittlesey: Well—

Mr. Rubenstein: Wait a minute.

Mr. Whittlesey: I do not think he quite understood your question.

By Mr. Rubenstein:

Q. Did you ever hear the word "union"? A. Yes.

Q. Did you ever hear of the CIO? A. Yes.

Q. Did you before January the 8th know what a union is? A. Not exactly.

Q. You did not know what a union was? A. No.

Q. Do you read newspapers? A. Yes.

951

Q. Did you never come across an item reporting about unions? A. Yes, but it would not give me very much information.

Q. But when you read an article in a newspaper about a union, did you know what it meant?

Mr. Whittlesey: I object to that question.

Trial Examiner Hektoen: When they referred to a union in such articles, did you know what the union was?

The Witness: Yes.

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*-Ott Bofinger—For Respondent—Cross.**By Mr. Rubenstein:*

Q. And you knew that a union is an organization of workers? A. Yes.

Q. Is that right? A. Yes.

Q. And you knew what the CIO was?

Mr. Whittlesey: I object to that again "what it was". He can ask him some particular thing as to what the CIO did or was. What is the Republican party or the Democratic party.

953

Trial Examiner Hektoen: Will you read the question, Mr. Reporter, please?

(Question read.)

Trial Examiner Hektoen: He may answer.

The Witness: No.

By Mr. Rubenstein:

Q. You never heard of the CIO? A. Yes.

Q. You did hear of the CIO? A. Yes.

Q. Where did you hear of the CIO? A. I have read about it.

954

Q. You have read about it? A. Yes, sir.

Q. Can you tell us in what papers or in what magazines you read about it? A. New York Journal.

Q. When you read about the CIO, you knew what the CIO was? A. No.

Q. You just read something and you did not know what it was about? A. You could not get enough information from that as to what the CIO is.

Q. Did you ask yourself, "What is the CIO which I read about?" A. I had an idea.

Q. Oh, you had an idea? A. Yes, sir.

Q. What was your idea about the CIO? A. I knew it was a union organization.

Q. You knew it was a union organization? A. Yes, sir.

Q. Did you know on or about January 8th that there was a CIO union at Ranger Aircraft? A. No.

Q. Ranger Aircraft is next door to yours; is it not? A. Yes, sir.

Q. And you did not know that there was a union there? A. No.

Q. However, you said that you at that time knew that a union is an organization of workers, and that the CIO is also a union; is that right? A. Yes.

Q. So when you saw this card, it was not the first time that you heard about a union? A. It was the first time when I saw the card.

Q. The first time you saw the card? A. Yes.

Q. And you felt that the card of a union, or soliciting for a union, is something worse than soliciting for the Fuselage Benevolent Fund? Is that right? A. No.

Q. Then why did you tell Sargent to watch Stone, and did not tell him to watch people collecting for the Fuselage Benevolent Association? A. It was something I didn't see before, and I wanted to get some more information, and in the meantime I told the foreman to see what was going on.

Q. You wanted to get some more information? A. Yes.

Q. Is that right? A. That is right.

Q. What did you do? A. I went to the personnel department.

Q. When? A. I had some business to do.

Q. When? A. During the day.

Q. The same day? A. Yes.

Q. What business did you have to do with the personnel department on that day? A. Almost all kinds of business, releases, and for wage increases.

Q. How often do you go to the personnel department? A. At least once or twice a day.

Q. Once or twice a day? A. Yes, sir.

Q. And when you came to the personnel department,

958 *Ott Bofinger—For Respondent—Cross*

whom did you discuss this matter with? A. Mr. Hargreave.

Q. Mr. Hargreave? A. Yes, sir.

Q. And what did you tell him? A. I told him it was reported to me that there were union membership cards handed out in the shop.

Q. What did Hargreave say? A. Mr. Hargreave referred me to Mr. Wilson.

Q. And what did you do? A. I went in to see Mr. Wilson.

959 Q. And what did you tell Mr. Wilson? A. I told Mr. Wilson what was going on, and he told me that this was not allowed, and that it was against our company rules.

Q. Against the company rules? A. Yes.

Q. All this happened the same day that Sargent spoke to you about it? A. About the same day.

Q. And you were very much interested to find out whether or not it is within the company rules or against the company rules? Is that right? A. Yes.

Q. And when you spoke to both Hargreave and Wilson, you did not ask them what about other solicitations going on in the plant? A. No.

960 Q. You did not? A. No.

Q. You were not interested as to whether or not any other kind of solicitation violates company rules?

Mr. Whittlesey: I think that is a pretty indefinite question, whether any other kind of solicitation violates company rules.

Trial Examiner Hektoen: Read the question, please, Mr. Reporter.

(Question read.)

Trial Examiner Hektoen: I think he may answer.

The Witness: No.

By Mr. Rubenstein:

Q. Didn't you think that it would be advisable to take the card which was handed to you by Sargent, in order to show it to Hargreave and Wilson, when you saw them? A. No.

Q. And Hargreave and Wilson did not ask you, "What kind of cards are they distributing?" A. I told them.

Q. And they took your word for it? A. Yes.

Q. That was on the 8th or 10th of January? Is that right? A. Yes.

Q. And you told Sargent to watch Stone? A. I told him to watch if any more cards were handed out.

Q. When did you next have a report from Sargent? A. Almost every day.

Q. Almost every day? A. Yes.

Q. Where did he report to you? A. When I see the foreman on the floor.

Q. You went over to him every day and he told you about soliciting? Is that right? A. Yes.

Q. And where was that? A. Where?

Q. Yes, sir. A. On the floor.

Q. On the floor. Sargent was one of your foremen. Is that right? A. Yes.

Q. How many foremen did you supervise? A. 12.

Q. 12 foremen? A. Yes.

Q. All in one department? A. Yes.

Q. And that was department 40, was it? A. 50.

Q. Now, you came over daily to Sargent and asked him "How about Stone?" Is that right? A. No.

Q. What did you ask him? A. I asked him how the work was going along.

Q. Yes. And what did he say? A. We talked about the work, and then he also would mention what was going on amongst his men.

964

Ott Bofinger—For Respondent—Cross

Q. Did you ask him, "Well, is Stone still soliciting memberships?" A. No, he told me.

Q. He told you? A. Yes.

Q. You did not ask him a thing? A. No.

Q. Were you interested to find out whether Stone was still soliciting? A. Yes.

Q. And you never asked him until he told you? A. Yes.

Q. Is that it? A. Yes.

Q. You kept quiet? A. Yes.

965 Q. During those few days between the 8th and the 15th, you never asked him whether Stone was still soliciting? A. No, he told me.

Q. You never asked him, I say? A. No.

Q. You just kept quiet and he told you? A. That is right.

Q. What did he tell you? A. He told me that the cards were still handed out.

Q. And that is all? A. Yes.

Q. How did you know that Stone was handing them out? A. He told me.

966 Q. Oh, so he not only told you that cards were still being handed out but he also told you that Stone was handing them out; is that right? A. That is right.

Q. Did he tell you anything else? A. No.

Q. That is all? A. Yes.

Q. Nothing about how the cards are being distributed, or anything else? A. No.

Q. He just told you that "Cards are still being handed out"? A. Yes.

Q. And then he mentioned the name of Stone; is that right? A. Yes.

Q. Were you not interested to know when and how these cards were being handed out? A. Yes.

Q. Did you ask him? A. No.

Q. You did not ask him? A. No.

Q. Even though you were interested in it? A. Yes.

Q. Now that went on for a period of about eight days; is that right? A. About that.

Q. And you saw the foreman about twice or three times a day? A. Yes.

Q. And every time you saw him he gave you the same story? A. He told me once, and that was enough.

Q. Once during the day? A. Yes.

Q. Yes. A. Yes.

Q. Do you remember what time during the day he told you? A. No.

Q. You were not interested? A. Interested in what?

Q. As to when he told you? A. No.

Q. Did you make any reports about his stories to you? A. Yes.

Q. Written reports? A. No.

Q. Whom did you report it to? A. To Mr. Wheeler.

Q. To Mr. Wheeler? A. Yes.

Q. Did you report to him daily? A. Yes.

Q. What did Mr. Wheeler say? A. He told me if this was going on, I would have to give Stone a warning.

Q. A warning? A. Yes.

Q. Who is Mr. Wheeler? A. He is the superintendent.

Q. Did you report any more to either Hargreave or Wilson? A. No.

Q. You did not find it necessary any more? A. No.

Q. And in view of the fact that Hargreave and Wilson told you that it was not permissible, did you not deem it necessary to report to them? A. Well—

Mr. Whittlesey: That is argumentative.

Trial Examiner Hektoen: What is that?

Mr. Whittlesey: That is arguing with the witness, it seems to me.

Trial Examiner Hektoen: Let us find out. How does it happen that you did not report to them, Mr. Bofinger?

970

Ott Bofinger—For Respondent—Cross

The Witness: Because Mr. Wheeler is my superior.

By Mr. Rubenstein:

Q. Why did you find it necessary to report on the 8th to Hargreave and Wilson, before speaking to Wheeler? A. Because I happened to be in the personnel department.

Q. And that is the only reason? A. Yes.

Q. You said that you had several foremen in the same department? A. Yes.

971

Q. And you got your reports from each foreman? A. I checked with each foreman every day.

Q. Every day? A. Yes.

Q. And each foreman knew what was going on in the shop? A. Yes.

Q. Is that right? A. Yes.

Q. In his department? A. Yes.

Q. Did you get any reports from any other foremen about solicitation? A. Yes.

Q. Any other foremen? A. Yes.

Q. Who were the foremen? A. Ray Orobona.

972

Q. What was the report of Orobona? A. That he saw Sam Stone handing out cards in the shop.

Q. When did he report to you? A. During the days.

Q. During the days? A. Yes.

Q. Can you tell us what days? A. No.

Q. You don't know. A. No.

Q. Is it possible that it was before the 8th of January? A. I don't know.

Q. Was it before you first heard the report from Sargent? A. No.

Q. You are sure of that? A. Yes.

Q. How long after you had the report from Sargent did you get a report from Orobona? A. How long before?

Q. After. A. After?

Ott Bofinger—For Respondent—Cross

973

Q. Yes. A. I don't know.

Q. You don't know? A. No.

Q. Well, was it the same day? A. No.

Q. Was it the next day? A. It could have been any one of the days.

Q. It could have been any one of the days? A. That is right.

Q. But you are not sure what day it was? A. No.

Q. What makes you sure that the first report which you got from Sargent was on the 8th or 10th? A. When I think back, I could recall approximately the time.

974

Q. What makes you think back? A. The day I gave him the warning, that sort of gives me a guide to think back.

Q. When did you give him the warning? A. The 15th.

Q. The 15th? A. Yes, sir.

Q. Now let us see. You were told about it about the 8th or 10th; is that right? A. About that time.

Q. That same day you checked with Mr. Hargreave and Mr. Wilson, and they told you that it was against company rules. Is that right? A. Yes.

Q. And then you had Mr. Sam Stone watched; is that right? A. Not particularly.

Q. Well, when you say "not particularly", what do you mean? A. I didn't say just to watch that one man.

975

Q. You said what? A. I told him to watch for anyone of those cards being handed out in the factory.

Q. And then you were getting daily reports? A. Yes.

Q. And all those reports were about Sam Stone? A. Yes.

Q. They didn't tell you that anyone else was doing that, did they? A. No.

Q. Didn't you think it proper to warn Sam Stone immediately that it was a violation of company rules to solicit membership? A. Well, I didn't see it myself.

976

Ott Bofinger—For Respondent—Cross

Q. You didn't see it yourself? A. That is right.

Q. But you took the word of Sargent; is that right? A.

Yes.

Q. You knew it was improper, and you let it go on? A.

Yes.

Q. Did you tell Sargent to warn Stone? A. No.

Q. You let Stone go on soliciting with your knowledge and with Sargent's knowledge, and without telling him that it was a violation of the company's rules? A.

Yes.

977

Q. And you finally warned him when? A. The 15th.

Q. The 15th of what month? January? A. January.

Q. In the morning? A. In the afternoon.

Q. In the afternoon? A. Yes.

Q. Did you see Mr. Stone on the 14th? A. Yes.

Q. You did see him on the 14th? A. Yes.

Q. Where did you see him on the 14th? A. I don't recall.

Q. You don't recall where you saw him? A. No.

Q. Did you see anything about Mr. Stone on the 14th?

A. No.

Q. Did you see him wearing a steward's button? A.

No.

978

Q. You did not see him wearing a steward's button on the 14th? A. No.

Q. Did you speak to Mr. Stone on the 14th? A. No.

Q. Where did you see him? A. I saw him in the shop.

Q. And how did you see him? Did you face him, or were you close to him? A. I don't know.

Q. You don't know? A. No.

Q. How do you know that you saw him? A. I just seen him.

Q. What makes you feel that you just seen him? A. Well, if you see anyone's face, you can tell who he is.

Q. How many employees do you have under your supervision? A. About 600.

Q. And you are passing the shop daily several times?
A. Yes.

Q. Do you remember each and every one of the 600 employees that you see daily? A. No.

Q. You don't? A. No.

Q. So, if you say that you saw a man, there must have been some reason why you remember him. Is that right?
A. I look at his face.

Q. Well, do you look at the face of all the six hundred men? A. If I say I see a man, I make sure that I see it was he himself.

Q. On the 14th did you make sure that you saw Stone?
A. No.

Q. You did not make sure that you saw Stone? A. No.

Q. So that you are not sure whether you saw him on the 14th or not? A. I saw his face.

Q. You saw his face? A. Yes.

Q. How close? A. Oh, at a distance.

Q. At a distance? A. Yes.

Q. How far from Mr. Stone did you pass or did you look at him? A. I don't know.

Q. You know nothing about the circumstances, but you know that you saw him? Is that it? A. Yes, sir.

Q. And you did not see anything that he wore on his lapel? A. No.

Q. You were not close enough to him? Is that it?
A. I don't know.

Q. You don't know? A. No.

Q. But you still know that you saw his face? A. Yes.

Q. Now on the 15th you say that a request was made for the change of Stone to another department?

Mr. Whittlesey: No, I do not think he testified to that.

The Witness: No.

Mr. Rubenstein: My mistake.

By Mr. Rubenstein:

Q. A request was made by the foreman of another department to send him some men, or to loan him some men; is that right? A. The request was made by a supervisor.

Q. By another supervisor? A. Yes, sir.

Q. To loan him some men? A. Yes.

Q. And you had to loan him how many men? A. He asked for about eight, or whatever I could spare.

Q. And those eight were to come out of the 600 men under your supervision; is that right? A. Yes.

Q. What did you do to fulfill his request? A. I checked with about three of my foremen.

Q. With three? A. Yes.

Q. Did these three men give you the 8 or 10 people? A. Not all at once.

Q. Not all at once. What three men did you check with? A. The foreman of the bottom half section, Kenny Heimler, the foreman of the splice section, Wesley Sargent, and the foreman of the miscellaneous section, Ted Beck.

Q. Whom did you speak first with? A. Kenny Heimler.

Q. Did Kenny Heimler give you any men? A. No.

Q. He told you that he has not got any men to spare? Is that it? A. Yes, sir.

Q. Whom did you speak to next? A. Wesley Sargent.

Q. Wesley Sargent. How many men did Wesley Sargent give you? A. He said, "Whatever I can get I'll send them up to the office."

Q. Whatever he can get? A. Yes.

Q. Did you have any discussion with him as to who he should get? A. No.

Q. You did not? A. No.

Q. Did he tell you who he would give you? A. No.

Q. Then he brought you how many men? A. Two.

Q. And one of them was Stone? A. Yes.

Q. And the other one was Jones? A. Yes.

Q. What time of day was that? A. A quarter after eight.

Q. A quarter after eight? A. About.

Q. And that morning you saw Stone? A. Yes.

Q. Did you see him through the window or did you see him outside your office? A. I saw him right outside.

Q. Right outside the office? A. Yes, sir.

Q. Did you that morning see a button worn by Stone?

A. Yes.

Q. And what button was it? A. A steward button.

Q. A steward button? A. Yes.

Q. You know what a steward button is? A. Yes, after I saw him with it.

Q. Did you ask him what kind of button it was? A. No.

Q. You did not? A. No.

Q. Did you look at the button? A. It is written right on it.

Q. Steward? A. Yes.

Q. You were not interested to know what it was? A. No.

Q. You were not interested? A. No.

Q. And you did not ask him anything about it? A. No.

Q. But you just looked at it? A. Yes.

Q. Where did he wear the button? A. In the front of my office.

Q. I mean on his body, where did he wear it? On his person? A. Standing in front.

Q. That is not responsive. Where was this button worn? A. His button?

Q. Yes. A. It was pinned on his shirt.

Q. On his shirt? A. Yes.

Q. Near the badge? A. Yes.

Q. And at that time you knew what a steward button was? A. Yes.

Q. You knew what a steward button was? Is that right? A. It is written right on it.

988

Ott Bofinger—For Respondent—Cross

Q. And you knew that a steward was an officer of the union? A. I don't know.

Q. You don't know? A. No.

Q. But you knew it had something to do with the union?

A. Yes.

Q. Then you took Mr. Stone and Mr. Jones and brought them over to Doglione. Is that right? A. Yes.

Q. And Doglione was inside of an office? A. Yes.

Q. Did Stone and Jones ever work before for Mr. Doglione? A. No.

989 Q. Do you know whether Mr. Doglione knew Stone from before? A. I don't know.

Q. But from your records he never worked for Doglione? Is that right? A. Not that I know of.

Q. Now when you brought over these two men, if I remember correctly, you left them outside the office, and you went into Mr. Doglione's office? A. Yes.

Q. What did you tell Mr. Doglione? A. I have two more for him now.

Q. Did you tell him what men they were? A. Yes.

Q. You gave him the names? A. Yes.

Q. Did you give him their experience records? A. No.

Q. Did you tell him what they can do? A. Yes.

990 Q. What did he say? A. He said, "I'll take the one." One was an assembler and the other one was a riveter. He said, "I'll take the one, but I won't take the other one."

Q. Where did he tell you "I'll take the one but I won't take the other one"? A. In the office.

Q. In the office before he saw them? A. Yes.

Q. You are sure of that? A. He told me that in the office.

Q. Didn't you testify on direct examination that he looked out of the window and said, "I'll take this one, but will not take that one"? A. Yes.

Q. So he saw them when he said whom he was going to take? A. He saw the two men.

Q. And when you just before said that he made up his mind before seeing them, you were not telling the truth?

A. I didn't get you right, then.

Q. Oh, you did not get me right. Let us see whether you get me right now or not. They came into Mr. Doglione's office. Is that right? A. Yes.

Q. How large an office is it?

The Witness: About 10 by 10.

By Mr. Rubenstein:

992

Q. And is there a desk in the office? A. Yes.

Q. And Mr. Doglione was sitting at a desk at the time? A. He was standing up.

Q. Where? A. In front of his desk.

Q. How far from the desk is the door? A. The width of the desk.

Mr. Rubenstein: Read the answer, Mr. Reporter, please.

(Answer read.)

By Mr. Rubenstein:

993

Q. Do you mean that the desk was as far away from the door as the width of the desk is? Is that right? A. Yes.

Q. And does the office have windows? A. Yes.

Q. It does have windows in it? A. Yes.

Q. Are those windows covered with frosted glass or just plain glass? A. No, they are plain glass.

Q. Which you can see through? A. Yes.

Q. How high is the glass from the floor? A. About four feet.

Q. About four feet? A. Yes.

Q. Now, how far was Stone and Jones from the door outside? A. I don't know.

Q. You don't know? A. I left them there.

994

Ott Bofinger—For Respondent—Cross

Q. And you don't know how far they walked? A. No.

Q. What happened then? A. Doglione told me he would take the one man who was an assembler, but in referring to Stone he said, "I won't take that one."

Q. Where did he point to him? Where was he when pointing at Stone? A. Outside.

Q. Outside? A. Yes.

Q. What happened between the time when you came in to see him and the time when he came outside? A. We were talking.

995

Q. You were talking about Stone? A. We were talking that I have two men, one an assembler and one a riveter.

Q. And then he came out with you and walked out the door? A. Yes.

Q. Is that right? A. Yes.

Q. And he looked at both of them? Is that right? A. Yes, he took one away.

Q. But before he took him away, he looked at him? A. Oh, yes, I imagine so.

Q. Then he pointed at Jones and said, "I'll take this one", and he pointed to Sam Stone and said, "I don't want this one." Is that right? A. He told me that in the office.

996

Q. Didn't you testify that he pointed out the man outside the office?

Mr. Lumbard: Who pointed it out, Mr. Rubenstein?

Mr. Rubenstein: Doglione.

Mr. Whittlesey: The men were outside the office.

Trial Examiner Hektoen: Where was Doglione when he pointed? Was he in his office?

The Witness: In his office.

By Mr. Rubenstein:

Q. He pointed out through the office? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. He was not outside? A. No.

Q. Did he go over to the window from the desk? A. No, he was standing in front of his desk.

Q. And he pointed to one man; is that right? A. Yes—he pointed to both of them.

Q. He pointed to both of them? A. Yes.

Q. He saw them through the window? A. Yes.

Q. Is it not a fact that he came out with you from the office, and outside the office he made the remark? A. No.

Q. You are sure of that?

Mr. Lumbard: I think counsel ought to direct his attention to some particular remark. That is awfully vague. 998

Mr. Rubenstein: The remark we are talking about is "I'll take this man and not that man."

The Witness: When we came out from the office, I knowed exactly which man that he wanted.

By Mr. Rubenstein:

Q. So that he did come out from the office with you? A. Yes.

Q. When he got out of the office with you, did he make any remarks? A. I don't know. 999

Q. You don't know? A. Correct.

Q. You remember the conversation in the office, don't you? A. I know one man he wanted, and that is all, and that was enough for me.

Q. That was all, and then you shut your ears. Is that it?

Mr. Lumbard: He has not testified that he shut his ears. I object to counsel's gratuitous remarks.

Mr. Rubenstein: I want to know if he heard or not.

Mr. Whittlesey: Ask him that question.

Ott Bofinger—For Respondent—Cross

By Mr. Rubenstein:

Q. When you went out of the office with Mr. Doglione, did Mr. Doglione say anything? A. I don't know.

Q. You don't know? A. No.

Q. You remember, do you not, what he said inside? A. Yes.

Q. But you don't know whether he said anything outside? A. No.

Q. Now, Mr. Stone has testified that when you and Doglione came out of the office, Mr. Doglione pointed to Stone and said, "I have enough of this going on here. I don't want that man." So that it is possible that he did say that?

Mr. Whittlesey: I object to the form of the question. He didn't say it was possible he said it.

Mr. Lombard: The only question is whether this witness heard it or not, and not what is possible, and therefore we object to the question in that form.

Trial Examiner Hektoen: Sustained.

By Mr. Rubenstein:

Q. You don't know whether he said anything or not? Is that it? A. No.

Q. He might have said something?

Mr. Lombard: The same objection.

Trial Examiner Hektoen: He may answer. Of course he might have said something, but you did not hear it? Is that right?

The Witness: I do not know.

By Mr. Rubenstein:

Q. You don't know? A. No.

Q. How far was he from Mr. Doglione and the two men? A. I don't know.

Q. You don't know? A. He was walking behind me.

Q. You know nothing as to what happened after Mr. Doglione went out of his office with you? A. All I know is that he took the one man.

Q. How did he take him? A. He said, "You come with me."

Q. He said, "You come with me?" A. Yes.

Q. So he did say something? A. He made the motion (indicating).

Q. He made just a motion? A. That is right.

Q. You don't know whether he said it or did not say it? 1004

A. No.

Q. What kind of motion did he make? A. He held his hand out.

Q. Like this? (indicating) A. Yes.

Q. Did he make any motion to Sam Stone? A. No. I already had Sam Stone on my way back, and I walked with Sam.

Q. You were going away with Sam Stone, and you saw him making a motion to Jones? A. The other man, yes.

Q. In which direction did you go, Mr. Bofinger? A. Back to my shop.

Q. And you left Mr. Doglione and Jones behind you? 1005

A. Yes.
Q. How did you see then what motion he made towards Jones? A. When I took Stone, he made the motion to Jones.

Q. And that is all that happened? Is that right? A. Yes, sir.

Q. And that was on the 15th of January? A. Yes.

Q. And that was the first day you saw Stone wearing a steward's button? A. Yes.

Q. What happened after that? A. I went back to my department.

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Ott Bofinger—For Respondent—Cross

Q. To your department? A. Yes.

Q. With Stone? A. With Stone.

Q. And was there any conversation between you and Stone on the way back to the department? A. Yes.

Q. What was the conversation? A. Stone asked me why I was taking him back.

Q. What did you say? A. I said, "The supervisor did not want you."

Q. You said, "The supervisor did not want you?" A. Yes.

1007

Q. And that is all you told him? A. Yes.

Q. Did he ask you, "Why doesn't he want me?" A. No.

Q. He was not interested to know that? A. No.

Q. Did he ask you any other questions? A. No.

Q. Did you have any other conversation with Stone at that time? A. No.

Q. Nothing was said between you except that he asked you why didn't he take him, and you answered, "He didn't want you?" Is that right? A. Right.

Q. And do you remember that absolutely? A. Yes.

Q. No other conversation at all? A. No.

1008

Q. By the way, what was Sam, a riveter or an assembly man? A. Riveter.

Q. Sam was a riveter? A. Yes.

Q. You testified that Doglione wanted a riveter, didn't you? A. No.

Q. What did he want? A. Eight men.

Q. Eight men? A. Yes.

Q. He did not specify the eight men, did he? A. No.

Q. He just said, "Give me eight men?" A. That is right.

Q. He didn't say what kind of eight men he wanted? A. No.

Q. And is it the procedure in your shop for a supervisor

to call for a specified number of men, without telling you what qualifications those men are supposed to have? A. No, not exactly.

Q. But in this case he did not specify; is that right?

A. No.

Q. What? A. He had not.

Q. He had not specified? A. No.

Q. He just said he wants eight men? A. Right.

Q. And you picked eight men? A. Yes.

Q. Did you pick eight men, or what?

Mr. Whittlesey: I believe he testified that the foreman picked eight, and not him.

1010

The Witness: I asked for eight and got only two.

By Mr. Rubenstein:

Q. You got only two? A. Yes.

Q. And those two were Jones and Sam Stone? A. Yes.

Q. And Sam Stone you say was a riveter? Is that right? A. Yes.

Q. What was Jones? A. An assembler.

Q. An assembler? A. Yes.

Q. And when you brought them down to Mr. Doglione, you say that Doglione wanted only a riveter? A. No.

1011

Q. What did he want? A. He wanted eight men.

Q. Just eight men? A. Yes, sir.

Q. Have you not testified before that when you gave him the names of the two men, Doglione said, "I want a riveter and not an assembly man"? A. No.

Q. You have not so testified? A. No. He said, "I'll take this man but not the other."

Q. And you are absolutely certain that you have not testified just before, on my questioning, that he told you he wanted a riveter and not an assembly man?

1012

Ott Bofinger—For Respondent—Cross

The Witness: No.

By Mr. Rubenstein:

Q. Did he say that he wanted an assembly man and not a riveter?

Mr. Whittlesey: I object to that. That has been asked four times.

Mr. Rubenstein: I am trying to establish it.

1013

Trial Examiner Hektoen: Let us hear it the fourth time.

The Witness: I told him what I had, and he told me "I'll take the one man and not the other."

By Mr. Rubenstein:

Q. He said he would take the one man and not the other. Is that all? A. Yes, sir.

Q. And he did not mention either a riveter or an assembly man? A. No.

1014

Q. And you are absolutely certain that while walking back from Doglione's office, the only conversation between you and Mr. Stone was that he asked you "why didn't he take me", and you said, "He didn't want you"? A. Yes.

Q. And there were no other conversations? A. Yes, then Sam Stone said, "There will be a time when we will get along very nicely."

Q. Oh, so there was some more conversation? A. Yes.

Q. Did you ask him what he meant by that? A. No. I assumed he meant the other supervisor.

Q. You assumed that? A. Yes.

Q. What made you assume that? A. I don't know. I just thought he meant the other fellow. I didn't think that he meant me.

Q. You testified that he did not work for the other

fellow. What made you assume that he meant the other fellow? A. I don't know.

Q. You don't know? A. No.

Q. You did not ask Sam what he meant by that? A. No.

Q. Did Sam mention anything about a union on his way back? A. No.

Q. Not a word? A. No.

Q. Now this was eight days after you first reported that Sam Stone was soliciting for the union? A. Yes.

Q. Will you tell us what happened after you came back with Stone?

Mr. Whittlesey: Seven days is more accurate.

Mr. Rubenstein: I apologize.

Mr. Whittlesey: Let us get it straight.

By Mr. Rubenstein:

Q. What happened when you came back with Stone?

A. I went to my department.

Q. Did you go to your office? A. Yes.

Q. Did you tell Stone what to do? A. I went over towards the shop, and I got in touch with the foreman of the fin department on the way over.

Q. Yes. A. And he told me that he needed men, needed help.

Q. On the way over you got in touch with the foreman of the wing department? A. The fin department.

Q. How far is the fin department from Doglione's office? A. It is in my department. It is about 500 feet.

Mr. Rubenstein: Repeat the answer, Mr. Reporter, please.

(Answer read:)

By Mr. Rubenstein:

Q. Is it before your office? A. After my office.

1018

Ott Bofinger—For Respondent—Cross

Q. You have got to pass your office? A. Yes.

Q. Let us get it clear because I would like to see the picture. You went out of Doglione's office with Mr. Stone, and you walked all the way to your department? Is that right? A. Yes.

Q. And on the way, you stopped at the fin department? A. Yes. I saw the foreman of the fin department.

Q. At his department? A. This is the fin section.

Q. The fin section? A. Yes, sir.

Q. Is that right? A. In my department.

1019

Q. You had already passed your office? A. That is right.

Q. And you kept on walking all the time with Stone? Is that right? A. On my way over?

Q. On your way over, yes. A. Past my office.

Q. Past your office, and kept on walking with Stone? A. That is right.

Q. Did you pass the place where Stone was working before? A. No.

Q. Stone was working still further? A. That is right.

Q. And you stopped at the fin section? A. Yes.

Q. Whom did you speak to at the fin section? A. The foreman.

1020

Q. The foreman. What did you ask him? A. He asked me.

Q. What did he ask you? A. Or he told me that he needed help.

Q. And you told Sam Stone to stay there? A. And so I introduced Sam Stone to this foreman of the fin section.

Q. What time of day was that? A. In the morning.

Q. About what time? Do you remember? A. No.

Q. You can't remember? A. It all happened after eight o'clock.

Q. After eight o'clock is four o'clock in the afternoon; sir.

Ott Bofinger—For Respondent—Cross

1021

Mr. Whittlesey: He said in the morning.

The Witness: Yes.

Mr. Lumbard: It would not be after 12 o'clock,
Mr. Rubenstein.

By Mr. Rubenstein:

Q. Was it closer to 12 o'clock or closer to 8 o'clock?

A. Closer to 8 o'clock.

Q. What about 9? A. I do not know.

Q. What about 8:30? A. About.

Q. About 8:30? A. Yes.

1022

Q. What happened after that during the day? Will
you repeat and tell us what happened during the day?

Mr. Whittlesey: I think you could ask a simple
question.

Mr. Rubenstein: Cross it out.

By Mr. Rubenstein:

Q. Did you speak to Sam Stone again during that day?

A. Yes.

Q. On what occasion? A. About soliciting. I gave him
a warning.

1023

Q. When was that? A. In my office.

Q. When? A. After lunch.

Q. After lunch? A. Yes.

Q. About what time of day was it? A. In the afternoon.

Q. What time of day did you say? A. It was after
lunch.

Q. After lunch? A. That is right.

Q. Could you tell with any more certainty as to what
time it was? A. It could be one o'clock.

Q. About one o'clock? A. Yes.

Q. When do you stop lunch there? A. What?

1024

Ott Bofinger—For Respondent—Cross

Q. When does the lunch period end there? A. A quarter to one.

Q. How did Mr. Stone happen to come to your office?

A. He was told by his foreman to come over to see me.

Q. You told his foreman to tell him to come over to see you? A. Yes.

Q. And he came then? A. Yes.

Q. Who was in your office at that time? A. His foreman.

Q. Sargent? A. No, the foreman of the fin section.

1025

Q. Yes. And you? A. Yes.

Q. And Mr. Stone? A. And Mr. Stone.

Q. Anyone else? A. And another foreman happened to be there.

Q. Another foreman? A. Yes.

Q. What was the name of the other foreman? A. Simone.

Q. Was he at Stone's department? A. No.

Q. And what happened then? A. I gave Stone, or I told him that it was not allowed to solicit in the factory.

Q. Did you see Stone before one o'clock and after the morning that you left him? A. Yes.

1026

Q. Where did you see him? A. I saw him at his work.

Q. At his work? A. That is right.

Q. While you were passing there? A. Yes.

Q. Can you tell us about what time of day it was? A. During the morning. I passed there several times.

Q. You mean by that that you passed his place several times? A. Yes.

Q. That morning? A. Yes.

Q. And you looked specifically at Stone that morning? A. I look at everybody.

Q. You look at everybody? A. Yes.

Q. You saw Stone that morning? A. Yes.

Q. At his bench? A. Yes.

Q. Working? A. At his job.

Q. At his job, working? A. Yes.

Q. And that was the only time that you saw him that morning? A. I saw him at noon time.

Q. At noon time? A. Yes.

Q. Do you mean the lunch hour? A. Yes.

Q. Where did you see him? A. In the main alley.

Q. In the main alley? A. Of our department.

Q. You made it your business to see him at lunch time that day? A. Everybody goes there to have a smoke, so I went over there.

Q. For any purpose? A. I wanted to see whether those cards were handed out. 1028

Q. You got interested and wanted to see whether they were really being handed out? A. I wanted to convince myself.

Q. And that was on the 15th? A. Yes.

Q. Until that day you did not deem it necessary to convince yourself whether those cards were being handed out? A. I didn't have the time.

Q. You didn't have the time? A. That is right.

Q. For a period of seven days? A. No.

Q. And you finally found time on the 15th, when you saw Mr. Stone wearing a steward's button? 1029

Mr. Whittlesey: I object to the question as argumentative. You have the testimony, and you do not need to argue.

Trial Examiner Hektoen: Objection overruled. Read the question, Mr. Reporter, please.

(Question read.)

The Witness: Yes.

By Mr. Rubenstein:

Q. On the 15th, when you saw Mr. Stone's button, that was the first time you saw a union button in the shop? A. Yes.

1030

Ott Bofinger—For Respondent—Cross

Q. The first time? A. Yes.

Q. You never saw any other button in the shop? A. No.

Mr. Lombard: Was that question "In the shop"?

Mr. Rubenstein: Yes.

By Mr. Rubenstein:

Q. Now, on the day of discharge, on the same day, the 15th of January, 1943, you testified that you made out a release slip for Mr. Stone? A. Yes.

1031

Q. Did you discuss his release with Mr. Hargreave or Mr. Wilson, before you made it out? A. No.

Q. You did it on your own initiative? A. Yes.

Q. Were you told to discharge him? A. No.

Q. How did you decide to discharge him? A. After I gave him the warning, I could see that he wouldn't do it anyway, what I advised him to do.

Q. You could see he wouldn't do it anyway. Is that it? A. Yes.

Q. Let us get this clear. You gave him the warning at one o'clock on the 15th. Is that right? A. Yes.

Q. Before that you never warned him? A. No.

Q. Is that right? A. Yes.

1032

Q. Now, that was one o'clock, after the lunch hour. Right? A. About.

Q. And you made out the release when? A. Right after.

Q. Right after? A. Yes.

Q. You walked out of your office and you warned him, and you made out the release. Right?

Mr. Lombard: He didn't say he walked out of his office.

The Witness: No.

By Mr. Rubenstein:

Q. Is it "no"? What is your answer? A. I didn't walk out of my office.

Q. You didn't walk out of your office? A. No.

Q. Do you mean you gave him the release right in the office? A. No.

Q. Let us get clear on this. You called Mr. Stone into your office? A. Yes.

Q. At about one o'clock? A. Yes.

Q. On January 15, 1943? Is that right, Mr. Bofinger? A. Yes.

1034

Q. At that time you gave him his first warning not to solicit; is that right? A. That is correct, yes.

Q. What happened then? Did he walk out? A. Yes.

Q. Right after he walked out, you made out the release? A. Yes.

Q. Right after he walked out? A. About a half hour afterwards.

Q. About a half hour afterwards? A. Yes, sir.

Q. Did you see Mr. Stone between the time he walked out and the time you made the release out? A. No.

Q. Who brought the release over to Mr. Stone? A. Nobody.

1035

Q. He was not given the release that day? A. No.

Q. It was cancelled? A. Yes.

Q. One more question or two and I will be through.

Who ordered you to stop the soliciting in the Fuselage Department?

Trial Examiner Hektoen: The solicitation in the Fuselage Department?

Mr. Rubenstein: For the Fuselage Benevolent Association.

The Witness: Mr. Wilson.

1036

*Ott Bofinger—For Respondent—Cross**By Mr. Rubenstein:*

Q. And, as I understand you, you testified that was last week? A. Yes.

Q. He gave you a written order? A. No.

Q. What did he tell you? A. He said we have to stop this.

Q. He called you into his office? A. He came out to see me.

Q. At your office? A. Yes.

1037

Q. And he told you what? Will you please repeat the entire conversation which took place between you and Mr. Wilson? A. He said, "Say Otto, on this Fuselage Benevolent Association, we want to discontinue that."

Q. He came into your office and said, "We want to discontinue that?" A. When I saw him. He didn't come to my office. I saw him.

Q. Where did you see him? A. In the office building.

Q. In the office building? A. Yes.

Q. How far is the office building from your office? A. About a five minute walk.

Q. And do you remember the day that this happened? A. Not the exact day.

1038

Q. Not the exact day? A. No.

Q. Do you remember the approximate day? A. Last week.

Q. Last week? A. Yes.

Q. Was it last Monday? A. No.

Q. Was it Tuesday? A. No.

Q. Was it Wednesday? A. About the middle of the week.

Q. About the middle of the week? A. Yes.

Q. It takes you about five minutes to walk to the office building? A. Yes.

Q. Is that right? A. Yes, sir.

Q. You have to walk through an outside or inside connection? A. All inside.

Q. All inside? A. Yes, sir.

Q. How often do you go to the office building? A. It all depends; sometimes two or three times a day.

Q. Sometimes two or three times a day? A. Yes, sir.

Q. On that day you went to the office building, do you remember what time of the day it was? A. No.

Q. You do not? A. No.

Q. You don't remember whether it was in the morning or afternoon? A. No.

Q. Do you remember who you asked to see in the office building? A. I was on my way to the personnel department.

Q. To the personnel department? A. Yes, sir.

Q. That is Mr. Wilson's department; is that it? A. No. The industrial relations department.

Q. Whom did you have to see in the personnel department? A. Mr. Ferris.

Q. Do you remember what you had to see him about?

Mr. Whittlesey: I wonder, your Honor, if we are not getting pretty far afield. He asked to find out what instructions he got; he has asked when he got the instructions and he has asked what was said. He has been told all of that.

Now we are talking about other people here.

Trial Examiner Hektoen: He is trying to find out when this happened, the occasion for going over there and so on.

The question may be answered.

A. I don't remember.

By Mr. Rubenstein:

Q. You don't remember? A. No.

Q. Is Miss Ferris' desk in the same office with Mr. Wilson? A. No.

Q. How far is Mr. Wilson's office from Miss Ferris' office? A. I don't know.

1042

Ott Bofinger—For Respondent—Cross

Q. You do not know? A. No.

Q. Do you know where Mr. Wilson's office is? A. Yes.

Q. Do you know where Miss Ferris' office is? A. Yes.

Q. You don't know how far one from the other is? A. No.

Q. How old are you, Mr. Bofinger? A. I am 34.

Q. Is Mr. Wilson's office in the same wing as Miss Ferris' office? A. Yes, sir.

Mr. Rose: Mr. Examiner, may we have our morning recess now?

1043

Trial Examiner Hektoen: Are you about through, Mr. Rubenstein?

Mr. Rubenstein: I have only a couple more questions. This is the last question I am trying to develop.

If you want to we can recess now.

Trial Examiner Hektoen: I would like to complete your examination.

Mr. Rubenstein: I don't like to make some people feel inconvenienced.

Trial Examiner Hektoen: All right. We will recess for five minutes.

1044

(Recess taken.)

Trial Examiner Hektoen: We will be in order. Go ahead, Mr. Rubenstein.

Mr. Rubenstein: May I have the last question and answer read, please?

(Record read.)

By Mr. Rubenstein:

Q. Now you saw Miss Ferris that morning was it?
A. On that day.

Q. And how long were you in Miss Ferris' office? A. I don't know.

Q. You don't know? A. No.

Q. After you left Miss Ferris what did you do? A. On the way over I saw Mr. Wilson. After I left Miss Ferris' office I went back to my shop.

Q. Mr. Wilson's office, if I understand correctly, is between the shop and Miss Ferris' office? A. No, sir; it is in the same building as Miss Ferris' office.

Q. Which office is nearer to your shop, the office of Mr. Wilson or Miss Ferris? A. They are both about the same.

Q. Now you said that on your way back from Miss Ferris you stopped into Mr. Wilson's office? A. No, I went back to my shop.

1046

Q. You went back to your shop when? A. After I left Miss Ferris.

Q. Straight to your shop? A. Yes.

Q. When did you see Mr. Wilson? A. On the way over.

Q. On the way over to your shop; is that right? A. On the way over to the office building.

Q. When you were going to see Miss Ferris? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. You first stopped off at Mr. Wilson's office? A. I saw Mr. Wilson.

Q. Where? A. In the office building.

1047

Q. In the corridor? A. Yes, sir.

Q. What did you tell him? A. Mr. Wilson asked me whether we have the Fuselage Benevolent Fund.

I said yes, and Mr. Wilson told me I should stop it.

Q. And that was in the hallway of the building; is that right? A. Approximately, yes, sir.

Q. Did you ask him why it should be stopped? A. No.

Q. Did you ask him what you should do with the money that you have? A. I don't have any money.

Q. Not you, the Fuselage Benevolent Association? I am talking about. A. No.

1048

Ott Bofinger—For Respondent—Cross

Q. You are a member of the Fuselage Benevolent Association, aren't you? A. We have no members.

Q. You have contributed to the fund? A. Yes.

Q. Who is running the Fuselage Benevolent Association? A. The fellow workers in the shop.

Q. Do they have a president? A. No.

Q. Do they have any officers? A. No.

Q. How do you know where your money is going to?

Mr. Whittlesey: He did not say he knew anything about it.

1049

By Mr. Rubenstein:

Q. If he remembers. A. They only know when a fellow is going away in the Army, then he gets a check from it.

When another fellow's wife has a baby he gets a check for it.

Q. Well, do you know who holds the money of the Fuselage Benevolent Association? A. Yes. One of the fellows is filling out checks.

Q. Do you know his name? A. Yes.

Q. How does he sign the checks, as treasurer? A. Yes.

Q. He is treasurer then? A. Yes, sir.

1050

Q. Does the Fuselage Benevolent Association have any other officers? A. No.

Q. Does it have a secretary? A. No.

Q. You are sure it has not or you don't know, which? A. There never was any made that I know of.

Q. How was this fellow elected treasurer? A. The fellows decided one of them would have to make out their checks.

Q. Which fellows decided that? A. All of the men in the shop.

Q. They had a meeting and decided that? A. No.

Q. How did they decide it? A. Among themselves.

Q. Can you tell me how they decided among themselves?

Did they get together? A. Well, they came to the conclusion that Johnny shall make out the checks. That is all, that is all I know.

Q. All 600 members came to the same conclusion; is that right?

Mr. Lumbard: He did not say that.

The Witness: I don't know.

Mr. Lumbard: He did not say that.

Ask him a question instead of testifying, Mr. Rubenstein.

Trial Examiner Hektoen: All 600 people in the shop; is that what you mean?

The Witness: I would assume the most of them, the ones that was giving money to it.

By Mr. Rubenstein:

Q. Each one said "I want Johnny to be treasurer"? A. I don't know.

Q. But he is treasurer, is that right? A. He fills out checks.

Q. He has a check book under the name of the Fuselage Benevolent Association? A. Yes, sir.

Q. With the name "Fuselage Benevolent Association" on the check book? A. Yes.

Q. And is he the only one signing checks? A. Yes.

Q. Did you ask Mr. Wilson what shall be done with the money that still remains in the account of the Fuselage Benevolent Association? A. I didn't ask him but Mr. Wilson told me just pay out whatever we had and stop it.

Q. He told you that without you asking him any questions? A. Yes, sir.

Q. Do you know whether Mr. Wilson contributed to the Fuselage Benevolent Association? A. No.

Q. When you say no you mean you don't know or he did not? A. I don't know.

1054

Ott Bofinger—For Respondent—Cross

Q. You don't know? A. No.

Q. Did he tell you how to pay the fund? A. No.

Q. He did not say that either? A. No.

Q. He just said, "Pay out the money"? A. "Let it run out."

Q. You did not ask him why after two and one-half years or so this Fuselage Benevolent Association ought to be stopped? A. No.

Q. You were not interested in it? A. I took that as good advice from Mr. Wilson.

1055

Q. You testified I understand either on direct or cross that when the Fuselage Benevolent Fund was organized, that you asked whether or not it was permissible to solicit funds. A. No.

Q. You did not ask? A. No.

Q. I was under the impression that you testified that when the Fuselage Benevolent Association was formed you inquired and you were told that it was all right and it was allowed.

Is my recollection correct? A. At the time when the Fuselage Benevolent Association—

Mr. Lumbard: Ask him what he testified.

1056

By Mr. Rubenstein:

Q. Did you so testify? A. No.

Q. You did not so testify? A. No.

Q. When it was organized you did not ask whether it violated any rule? A. No, I wasn't interested then.

Q. Do you know whether anyone asked whether it was permissible to collect money for the Fuselage Benevolent Association? A. I don't know.

Q. You don't know? A. No.

Q. You never investigated that matter? A. No.

Q. Mr. Wilson did not give you any reason for discontinuing the Fuselage Benevolent Association? A. No.

Q. You don't know of any reason for it? A. I know that if Mr. Wilson is giving me advice he must have a good reason for it.

Q. You never asked Mr. Wilson for the reason? A. No, sir.

Q. Do you know how much money there is in the Fuselage Benevolent Association when you were told to stop it?

A. No.

Q. Now, what did you do after—

Mr. Lumbard: Just a minute.

Do you want to say something else?

The Witness: Yes. I got a report there was no money there. It was all out. That we are in a hole.

By Mr. Rubenstein:

Q. Now which is it? You said no, then you said you got a report.

Mr. Lumbard: That is perfectly consistent. Maybe you do not understand.

The Witness: I don't know whether any money was there, but I got a report that we were in the hole.

By Mr. Rubenstein:

Q. Who reported to you that you were in the hole? A. The treasurer.

Q. When did he report to you? A. When I told him we have to stop.

Q. Did you call him into your office? A. No. I saw him on the way out of the shop.

Q. On the way from Mr. Wilson? A. No, when I go through the shop.

1060

Ott Bofinger—For Respondent—Redirect.

Q. How long after you saw Mr. Wilson did you speak to the treasurer of the Fuselage Benevolent Association?

A. How long after?

Q. Yes. A. About the same day.

Q. The same day? A. Yes.

Q. You came over to him and told him what? A. I told him we have to stop.

Q. What did he say? A. He said, "Well, we are in the hole anyway."

Q. And that was all he said? A. I told him that was a good time to stop.

1061

Q. When you are in the hole it is a good time to stop?

A. Yes.

Q. Did he ask what were the reasons for stopping it?

A. No.

Q. Did he not ask you either? A. No.

Q. Is he foreman or a leader? A. No, he is a worker.

Q. He is a worker? A. Yes.

Q. He was not interested to know why after two and one-half years you decided to stop it?

Mr. Whittlesey: I object.

1062

Trial Examiner Hektoen: The question of course implies did he ask any reasons for stopping.

The Witness: No.

Trial Examiner Hektoen: All right.

Mr. Rubenstein: That is all.

Trial Examiner Hektoen: Is there anything further, gentlemen?

Mr. Whittlesey: Yes.

Redirect examination by Mr. Whittlesey:

Q. Mr. Bofinger, I show you this exhibit marked Board's Exhibit 8-C here, and that bears the printed title in the

upper left-hand corner "Personnel change request". A. Yes, sir.

Q. Is that right? A. Yes.

Q. Now, did I understand you to say that this personnel change request as it appears here is a copy of the personnel change request that you made out? A. Yes.

Q. I show you Board's Exhibit 7-D and call your attention to the fact that in the upper left-hand corner that is called "Personnel change order." A. Yes, sir.

Q. Is that right? A. Yes.

Q. Is there some difference between personnel change request and personnel change order? A. Yes. 1064

Q. Now, both of these documents the personnel change request and the personnel change order are used, if I understand correctly, in connection with the release of an employee, among other things? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. When an employee is to be released which is made out first, the request or order? A. The request.

Q. And if the employee is an employee whom you are discharging do you make out the request? A. Yes, sir.

Q. First? A. Yes, sir.

Q. What in the routine in the shop is done with that request after it is made out by you? A. It is taken up to Mr. Wheeler. 1065

Q. Yes. A. The superintendent, for his signature.

Q. Yes. A. Then to Mr. Keogh and to Mr. MacDonald.

Q. Yes. A. And to Mr. Lasker.

Q. To Mr. Lasker? A. Yes.

Q. In that order; is that right? A. Yes, sir.

Q. After the personnel change request is signed by Mr. Lasker what happens next? A. It goes to the personnel department.

Q. What does the personnel department do? A. They type out a personnel change order.

1066

Ott Bofinger—For Respondent—Redirect

Q. In other words, they type out a form like this Board's Exhibit 7-D? A. Yes, sir.

Q. Is that right? A. Right.

Q. What is done with that personnel change order after it is typed out? A. That comes back in the shop to the supervisor.

Q. In other words, it comes back to the supervisor who first made out the personnel change request? A. Yes, sir.

Q. Is that right? A. Yes.

1067

Q. In other words, if you make out a personnel change request yourself you do not have anything to do directly with making out the personnel change order? A. No.

Q. Is that right? A. That is right.

Q. The personnel change order is made out after the request has been finally approved by Mr. Lasker? A. Yes.

Q. Is that right? A. Yes.

Q. Now I would like to go to this personnel change request marked Board's Exhibit 8-C.

That was signed by you; wasn't it? A. Yes.

Q. That is a request for the release of Sam Stone? A. Yes, sir.

1068

Q. I notice there that that has opposite the date, 1, is that 15 crossed out there? A. 15, yes.

Q. Now—

Mr. Rose: What are you referring to?

Mr. Whittlesey: How?

Mr. Rose: What are you referring to?

Mr. Whittlesey: I am referring to that (indicating).

By Mr. Whittlesey:

Q. Now, does that indicate that you made out a personnel change request for Sam Stone on January 15th? A. Yes.

Q. If I recall your testimony you testified on January 15th you had a talk with Sam Stone in your office about soliciting with these union cards. A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Was this personnel change request made out after that talk? A. Yes.

Q. Do you recall about how long after the talk it was made out? A. About half an hour.

Q. I wish you would take us back for a moment and tell us as nearly as you can recall in your own words just what that talk was between you and Sam Stone, what you said and what he said. 1070

Mr. Rose: I am going to object to that. That has been covered.

Mr. Whittlesey: I will tell you why I am going into it.

Trial Examiner Hektoen: You don't need to because the objection is overruled.

By Mr. Whittlesey:

Q. Tell us as best you can recall in your own way just what happened, who said what first, and what they said. A. Yes. When Sam Stone came into the office I explained to him why I called him in. 1071

Q. Yes. What did you say? A. About soliciting in the factory in our department.

I pointed out to him that it was against the company's rule to solicit in the factory.

Q. Did you show him the company's rule you referred to? A. Yes. I showed him the company rule book, and Sam Stone told me that he knew about it, but this has nothing to do with the rules that we have in our factory.

I explained to him that we all go by our orders that our management is setting up. That is why we have the company's book, the blue book.

1072

Ott Bofinger—For Respondent—Redirect

Well, Stone told me that I am only doing this because he has solicited for the union.

Q. Yes? A. I said, "No, that would not make any difference, if he was handing out cards out on the floor, which is against our orders or rule."

That was about all.

Q. Now, did Sam say that he would obey your instructions?

Mr. Rose: Same objection.

Trial Examiner Hektoen: Same ruling.

1073

The Witness: No.

By Mr. Whittlesey:

Q. Did he say that he would not obey them? A. No.

Q. Did you receive from him in this talk with him any impression in your own mind as to whether he would or would not obey them?

Mr. Rose: I object.

Mr. Rubenstein: I object to that.

Trial Examiner Hektoen: He testified on cross examination that he was under that impression.

1074

He may answer and then we will have some elaboration on it.

By Mr. Whittlesey:

Q. Do you want the question again, Mr. Bofinger? A. Yes, sir.

Mr. Whittlesey: Will the reporter read the question, please?

(Question read.)

The Witness: Yes.

Ott Bofinger—For Respondent—Redirect

1075

By Mr. Whittlesey:

Q. What was your impression? A. The impression I got—

Mr. Rose: May I have the same objection?

Trial Examiner Hektoen: You may and the ruling will be the same.

The Witness: The impression I got was that he would not follow my orders, my advice I gave him.

By Mr. Whittlesey:

1076

Q. Had you told him that if he continued to solicit that would mean his discharge? A. Yes.

Q. Then I take it he left your office? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. It was after this talk, after he left your office that you made out this personnel change request? A. Yes, sir.

Q. Is that right? A. Yes.

Q. What did you do with that request? A. I signed it.

Q. After that? A. I took it up to Mr. Wheeler.

Q. And he signed it? A. Yes, sir.

Q. Then what did you do with it? A. Well, we went to see Mr. Lasker.

Q. You took this request to Mr. Lasker? A. That is right.

1077

Q. Did he sign the request? A. No.

Q. Did he give you any reason for not signing it? A. Mr. Lasker told me I should go, I should see for myself first whether he would obey my advice, and if he would not, then I should make out the release.

Q. In other words, Mr. Lasker told you that he would not sign the request unless he knew that Sam Stone had refused to abide by the rules after warning? A. Yes, sir.

Mr. Rose: I object.

Trial Examiner Hektoen: Why?

1078

Ott Bofinger—For Respondent—Redirect

Mr. Rubenstein: Same objection.

Trial Examiner Hektoen: Why?

Mr. Rose: I object to counsel summarizing the testimony, especially on redirect.

Trial Examiner Hektoen: The objection is sustained.

Mr. Rose: If there has been any answer I move to strike it out.

Trial Examiner Hektoen: Strike it.

Mr. Whittlesey: I will withdraw the question.

1079

By Mr. Whittlesey:

Q. Now, Mr. Bofinger, you were asked several times on cross examination about going around to see your foremen in the shop at a time after you had received some reports.

A. Yes.

Q. That Sam Stone had been soliciting? A. Yes.

Q. Now, is it customary for you to go around to see your foremen every day? A. Yes, sir.

Q. You see them more than once every day, don't you? A. Yes, sir.

Q. All of them, don't you? A. All of them.

1080

Q. That was part of your duties, is it? A. Yes.

Q. You circulate among your foremen and see how the work is going? A. Yes, sir.

Q. You did not intend to indicate by your testimony there, did you, that you went to see them for the purpose of finding out whether Stone was continuing to solicit?

Mr. Rubenstein: I object to what he intended. The record speaks for itself.

The Witness: No.

Mr. Rose: I join in the objection.

Trial Examiner Hektoen: Read the question.

(Record read.)

Ott Bofinger—For Respondent—Redirect

1081

Trial Examiner Hektoen: The answer may stand.

By Mr. Whittlesey:

Q. I believe you also testified that when Sargent first reported to you about some solicitation by Sam you did not tell Sargent to instruct Stone to stop; is that right? A. That is right.

Q. You yourself at that time had not seen any solicitation by Stone? A. No.

Q. Is that right? A. That is right.

Q. By the way, that office of Mr. Doglione, am I right in understanding that that office is completely enclosed? A. Yes.

Q. It has glass sides? A. Yes, sir.

Q. I mean it is completely enclosed in a little building? A. Yes.

Q. Is that right? A. Yes.

Q. His office is in 10 shop; is it not? A. Yes, sir.

Q. That is a very noisy place? A. Yes.

Q. Is it not? A. Yes.

Q. Now you were asked some question on cross about whether you had seen any other buttons in your shop and I believe you said no; is that right? A. What kind of button?

Q. Union buttons, CIO buttons? A. No.

Q. You had not seen any in your shop? A. No.

Q. Am I right in understanding that you had seen persons wearing CIO buttons in other parts of the plant than in your shop?

Mr. Rose: I object.

Trial Examiner Hektoen: What page is that testimony?

Mr. Whittlesey: 450, on direct, your Honor.

1082

1083

1084

Ott Bofinger—For Respondent—Recross

I will withdraw the question and put it in another form.

By Mr. Whittlesey:

Q. Didn't you testify on direct examination yesterday that when you were asked whether you had seen any other CIO buttons in the plant at any time, that you had seen some in other departments but not in your department?

Mr. Rose: I object.

1085

Trial Examiner Hektoen: He may answer.

The Witness: Yes.

By Mr. Whittlesey:

Q. You had seen CIO buttons in departments of the shop other than your own?

Mr. Rose: The same objection.

Trial Examiner Hektoen: The same ruling.

The Witness: Yes, sir.

Mr. Whittlesey: That is all.

Trial Examiner Hektoen: Is there anything further?

1086

Mr. Rose: Yes.

Recross examination by Mr. Rose:

Q. Directing your attention, Mr. Bofinger, to the lower right-hand corner of Board's Exhibit 8-C, the word "date", you will notice "1/15" and the printed word "date". A. Yes.

Q. That was the date of this document? A. Yes.

Q. Is that right? A. Yes.

Q. Now after you took this document, Board's Exhibit 8-C up to Mr. Wheeler he signed it; is that right? A. Yes.

Ott Bofinger—For Respondent—Recross

1087

Trial Examiner Hektoen: The answer is yes?

The Witness: Yes.

By Mr. Rose:

Q. Where did you take it from Mr. Wheeler? A. Mr. Wheeler took it to Mr. Lasker.

Q. Some other signatures got on the document after Mr. Wheeler's; is that right? A. Yes. That was in the office right next to it.

Q. Whose office was that? A. Mr. MacDonald's.

Q. Did he put his signature on it? A. I don't know.

1088

Q. Does this refresh your recollection, showing you Board's Exhibit 8-C? A. Yes.

Q. You are still looking at the document that Mr. Keogh put his signature on? A. Yes.

Q. And that was on the 15th? A. Yes.

Q. Is that right? A. Yes.

Q. After the signatures were put on the document did the document remain in the office?

Mr. Lumbard: In whose office, Mr. Rose?

Mr. Rose: Excuse me.

Mr. Lumbard: Whose office are you referring to?

1089

By Mr. Rose:

Q. The company's office, as distinguished from your office as sectional supervisor. A. It remained in the office of the general superintendent under the factory management.

Q. It remained there and you went back to your department; is that right? A. No, I took it back with me.

Q. You took it back with you? A. Yes, sir.

Trial Examiner Hektoen: There seems to be a slight inconsistency there.

1090

Ott Bofinger—For Respondent—Recross

How long did it remain there?

The Witness: Until I was finished talking to Mr. Lasker.

Trial Examiner Hektoen: It remained in the office while you were talking to Mr. Lasker?

The Witness: Yes.

Trial Examiner Hektoen: Then you picked it up and took it away?

The Witness: Yes.

Trial Examiner Hektoen: All right.

1091

By Mr. Rose:

Q. Then where did you take it? A. I destroyed the original and I kept a copy, put the copy in my pocket.

Q. I beg your pardon? A. I put the copy in my pocket.

Q. You put the "carbon", did you say— A. Copy.

Q. Copy in your pocket? A. Yes.

Q. How long did you carry it in your pocket? A. I kept it in my wallet.

Q. How long did you keep it your wallet? A. Oh, until about two weeks ago.

1092 Q. Approximately when would that be, two weeks ago, the approximate date? A. I don't know.

Q. Did you do anything with it about two weeks ago? A. I had a talk with Mr. Kress.

Q. Did you do anything with it about two weeks ago? A. I give it to Mr. Kress.

Q. How many copies of the request were filled out when you have occasion to write one out? A. One.

Q. You mean by that that there is an original and one copy? A. Yes.

Q. How many of them go to the other men for signature? A. The original.

Q. Just the original is signed by the other men? A. Yes.

Q. Did you sign the copy? A. Yes.

Q. It is the original document only that goes to the other men for signature; is that right? A. Yes, unless we leave the carbon copy in between.

Q. In between what? A. In between the original and the copy. If you leave the carbon copy in there you get all the signatures on it, but the copy stays with the supervisor.

Q. Let me understand you.

After you signed one copy how many do you send to the office? A. Well, we send—it is necessary to only send the original; you don't have to send the copy.

1094

Q. You normally send the original? A. Yes.

Q. And that was the one that the other men sign? A. That is all that is necessary.

Q. What happens to the copy? Does that remain in your office? A. The copy goes back to the supervisor.

Q. How many did you submit on the 15th in the case of Stone? A. I don't know.

Q. How many did the other men sign on the 15th of January in connection with the case of Stone? A. I don't know.

Q. You don't know whether they signed one or more than one? A. They only have to sign one.

1095

Q. I am talking about one in connection with Stone.

You have no recollection how many the other men signed, whether they signed one or more than one; is that right? A. They only have to sign one, and if there is a carbon copy underneath there they sign the copy also.

Trial Examiner Hektoen: Do you know what happened in this case?

The Witness: I don't know.

Trial Examiner Hektoen: All right.

Ott Bofinger—For Respondent—Reecross

1096

By Mr. Rose:

Q. You make no difference between a personnel change request and personnel change order; is that right? A. Yes.

Q. Now, with reference to your conversation with Stone on January 15th, was it Stone's statement that he thought he had the right to hand out these cards that gave you the impression he would continue to do so? A. Yes.

Q. That was the only thing that gave you that impression; is that right? A. No.

1097

Q. What else gave you that impression? A. Well, when I explained to him how seriously it would be, that he could lose his job, he only had a smile on his face; he didn't take it seriously at all.

Q. So when you saw that Sam Stone was not taking it seriously you thought he would do it again? A. Yes, sir.

Q. Is that right? A. That is right.

Q. After you saw a smile on his face did you say anything to impress upon him that it was serious? A. Yes, I showed him the book again.

Q. You showed him the book again? A. That is right.

1098

Q. How many times did you show him the book? A. All the time I was talking to him I had the book right in front of me.

Q. Did you ask him why he was smiling? A. No.

Q. What was it that prompted you to write out a man's discharge on an impression you had, anything? A. What right?

Q. What was it that prompted you to write out a man's discharge from his employment on the basis of an impression you formed, anything in particular? A. After I had talked I thought it over a while and I came to the conclusion that the man would not follow my advice.

Q. That was the basis on which you decided to sever this man from his employment? A. The reason I give on the—

Ott Bofinger—For Respondent—Recross

1099

Q. Just answer my question.

Mr. Lombard: Let him answer.

I object to counsel interfering with the witness. He was about to answer the question when you cut him off. Let him finish.

Trial Examiner Hektoen: Read the question, please.

(Question read.)

Trial Examiner Hektoen: Is that correct?

The Witness: No.

1100

By Mr. Rose:

Q. At the time you saw Stone he was wearing the steward's button, wasn't he? I am talking about the conversation—

Mr. Whittlesey: What time are you talking about?

By Mr. Rose:

Q. I am talking about the time you saw him on the 15th, was Stone wearing a steward button at that meeting? A. Yes.

1101

Mr. Rose: I have no further questions in connection with this man's examination but I am going to offer in evidence a subpoena directed to the Respondent bearing No. B-4052 and the Post Office return receipt.

Mr. Lombard: For what purpose?

Mr. Rose: Well, I think it is relevant in connection with his testimony concerning the release or change requested.

Trial Examiner Hektoen: Now is there anything else with this witness?

1102.

Ott Bofinger—For Respondent—Recross

I think on that basis the proffer of that subpoena will be rejected.

Mr. Rubenstein: I would like to ask one or two questions, Mr. Examiner.

Trial Examiner Hektoen: All right.

By Mr. Rubenstein:

Q. You testified to us before that you did see some CIO buttons in the plant? A. Yes, sir.

1103

Q. Do you remember where in the plant you have seen them? A. No, sir.

Q. Do you remember when you have seen them? A. No.

Q. But do you remember whether you have seen such buttons? A. Yes.

Q. Was it about a year ago? A. No.

Q. Was it two years ago? A. No.

Q. Was it after the discharge of Sam Stone and others? A. No.

Q. When was it? A. I just can recall that I saw some buttons.

Q. You might have seen some buttons on the street; is that it? A. No, in the shop.

1104

Q. What makes you recall that you have seen certain buttons in the shop? A. You could see a button then, and I never saw any before in the shop.

Q. You mean you saw the button— A. That was the first time I saw it, in the shop.

Q. Did you look at every one whom you passed in the shop, whether he was wearing a button and what kind of button he wears? A. Yes, sir.

Q. You do, and do you go over to see what button it is? A. No, you can see it in the color of the badges.

Q. You said that this was a new button and you were interested in seeing what kind of button it was; is that right? A. No, it just stuck me—

Ott Bofinger—For Respondent—Recross

1105

Mr. Lombard: He did not say that. I object to the question.

Trial Examiner Hektoen: He said one button, and if he makes it clear which—

By Mr. Rubenstein:

Q. CIO buttons. A. I saw CIO buttons, yes.

Q. Where? A. In the factory.

Q. Do you know what shop? A. No.

Q. Do you know what part of the factory? A. Yes, it was in the parts plant.

1106

Q. Where in the parts plant? A. On the west side of our building.

Q. How far is it from shop 50? A. About 500 feet.

Q. How often do you go to the parts plant? A. Almost every day.

Q. You say that in the parts plant you see a CIO button? A. I saw some CIO buttons.

Q. Some CIO buttons? A. Yes, sir.

Q. More than one? A. Yes, sir.

Q. You remember when you have seen those buttons? A. No.

Q. You don't remember? A. No.

1107

Q. Do you remember whether or not it was a month prior to the discharge of Sam Stone? A. About the same month.

Q. About the same month? A. Yes, sir.

Q. Might it have been after the discharge? A. No, it was before.

Q. Before? A. Yes, sir.

Q. You saw them all in the parts plant? A. What I saw, yes.

Q. You said that you came over and looked closely at it.

Mr. Lombard: He did not say that.

The Witness: No.

1108

*Ott Bofinger—For Respondent—Recross.**By Mr. Rubenstein:*

Q. Did you see them all on the same day? A. No.

Q. Did you see them on several days? A. Yes.

Q. Were they all the same button? A. Yes, sir.

Q. Exactly the same? A. From what I could see.

Q. What do you mean, from what you could see? A. I could see it was a CIO button.

Q. How could you see it was a CIO button? A. It said on the button CIO.

1109

Q. It said CIO; is that it? A. Yes.

Q. Was it a red button? A. Red and white.

Q. Red and white? A. Yes, sir.

Q. Which was red and which was white? A. I don't know.

Q. You don't know? A. No.

Q. Do you know anything else about the button that you saw? A. No.

Q. Do you know the size of it? A. It was a small button.

Q. It was a small button? A. Yes, sir.

Q. Was it a round button? A. Yes.

Q. When you say it was a CIO button, what letters were on it? A. I don't know.

1110

Q. How do you know it was a CIO button? A. It said on it CIO.

Q. How did it say CIO? A. In letters.

Q. Letters? A. Yes.

Q. What letters? A. What letters?

Q. Yes. A. It said on it CIO.

Q. It said CIO? A. That is right; it was written on it.

Q. What letters did you see? A. CIO.

Mr. Whittlesey: I object. CIO contains three letters, one for C, one for I and one for O..

Mr. Rubenstein: Are you through?

Mr. Whittlesey: I am through, yes, sir.

By Mr. Rubenstein:

Q. Was there anything else besides letters? A. There is that possibility, yes.

Q. What do you mean; possibility, yes? A. There might have been more on there.

Q. Do you know or don't you know? A. I don't know.

Q. You don't know? A. No.

Q. What makes you sure you saw the letters CIO on it?
A. That is what I saw.

Q. How large were the letters? A. I don't know.

Q. You don't know but you saw them? A. Yes.

Q. Now, again, what was red and what was white? A. I don't know.

Q. You don't know? A. No.

Q. I show you this button, Union's Exhibit 1, I think it would be for identification.

Is this the button that you saw there? A. Yes.

Q. That is the identical button? A. That is about the button I saw there.

Q. Now you said you just saw CIO. A. Yes.

Q. Now what do you see now on it? A. "Vote. Join, U.A.W.,-CIO."

Q. That is the button you saw? A. Yes.

Q. You said there was only CIO on it. A. No.

Mr. Lumbard: He said that was all he saw.

By Mr. Rubenstein:

Q. Aren't you telling a fib?

Mr. Whittlesey: I object to that and move that it be stricken.

Trial Examiner Hektoen: Sustained.

1114

*Ott Bofinger—For Respondent—Recross**By Mr. Rubenstein:*

Q. Now you said before that another foreman reported to you about solicitation; is that right?

Mr. Whittlesey: Wait a minute. This is supposed to be recross examination.

Mr. Rubenstein: All right. I am through. No more questions.

Trial Examiner Hektoen: Is there anything else?

Mr. Lumbard: May we have that button marked?

Mr. Rubenstein: No.

Mr. Lumbard: I want that button to stay here so that we know what button it is.

Will you have it marked?

Trial Examiner Hektoen: It is marked Union's Exhibit 1 for identification.

(Thereupon the button above referred to was marked as Union's Exhibit 1 for identification.)

Trial Examiner Hektoen: It will remain in the reporter's possession.

Mr. Rubenstein: One more question.

1116 *By Mr. Rubenstein:*

Q. Did you ever see that button? A. No.

Q. You never saw it? A. No.

Mr. Lumbard: You better mark that. You have a couple of buttons there in your hand. Let's be sure you mark this one.

Mr. Rubenstein: I am not submitting that.

Mr. Lumbard: You had better mark it for identification.

Mr. Rubenstein: That should be Union's Exhibit for identification No. 2.

Ott Bofinger.—For Respondent—Recross

1117

Trial Examiner Hektoen: The second one will be marked Union's Exhibit No. 2 for identification.

Mr. Rubenstein: Yes.

(Thereupon the button above referred to was marked as Union's Exhibit 2 for identification.)

Trial Examiner Hektoen: Is there anything else?

Mr. Lombard: That is all that we have, your Honor.

Trial Examiner Hektoen: You said the impression that Stone gave you that he would not follow your orders was not responsible for your requesting his discharge. What was?

1118

The Witness: The discharge was made out for soliciting, breaking the company's rule of soliciting.

Trial Examiner Hektoen: In other words, for past performance rather than for future possibilities, that prompted you?

The Witness: Yes, sir.

Trial Examiner Hektoen: All right. That is all I have. Is there anything else?

Mr. Rose: I have nothing else.

Trial Examiner Hektoen: You are excused.

1119

(Witness excused.)

HANS E. LASKER was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

Trial Examiner Hektoen: What is your name?

The Witness: Hans E. Lasker.

Trial Examiner Hektoen: Your address?

The Witness: LaRue, Huntington, Long Island.

1120

*Hans E. Lasker—For Respondent—Direct**Direct examination by Mr. Lumbard:*

Q. Mr. Lasker, are you employed by Republic Aviation Corporation? A. I am.

Q. What is your position? A. I am factory manager.

Mr. Lumbard: I would like to say, your Honor, that we have here this afternoon both the factory manager and assistant factory manager; I am going to do the best I can to finish with both of them, so that they can go back to day.

1121

By Mr. Lumbard:

Q. How long have you been factory manager, Mr. Lasker? A. About 14 months.

Mr. Rose: Will you please keep your voice up?

The Witness: 14 months.

By Mr. Lumbard:

Q. How long have you been working with the company? A. Approximately 8 years.

1122

Q. That includes the predecessor of the company? A. That includes Seversky, including Republic, a total of eight years.

Q. What are your duties as factory manager? A. I am in direct charge of production and manufacturing of planes.

Q. Do the sectional supervisors come within your jurisdiction? A. That is correct.

Q. Also superintendents? A. That is correct.

Q. When requests are made for the release of employees do they come to your attention? A. They do.

Q. Must you approve all such requests for releases in order for them to become effective? A. Either I approve them myself or my assistant Mr. MacDonald, approves them, but my office approves them.

Hans E. Lasker—For Respondent—Direct

1123

Q. Sometimes you both approve them? A. That is correct. Only in my absence will Mr. MacDonald's signature be authoritative.

Q. Your absence from your office or from the plant? A. From the plant.

Q. I would like to show you Board's Exhibit 8-C which is the personnel change request regarding Sam Stone. A. Yes.

Q. Did that request come to your attention? A. That is correct.

Q. How did a request for the release of Sam Stone first come to your attention? A. Mr. Bofinger, accompanied by Mr. Wheeler, came into my office with a release slip for Sam Stone. 1124

I questioned Mr. Bofinger for details of the case and Mr. Bofinger told me that Sam Stone had been soliciting for union membership in the company, and that noon—I might say that this happened approximately about three o'clock in the afternoon—he told me that he had talked with Sam Stone at the lunch period and had explained to him that this blue book, which is our rule book, does not allow any solicitation; in fact, it opposes it.

I asked Mr. Bofinger whether that had happened just at that noon and he said yes. 1125

I asked Mr. Bofinger "Well, did Stone infringe on the company's rules? Did he disobey the rule"; and Mr. Bofinger did not know.

He had the release with him because he felt that Sam Stone was not going to obey his advice or his counsel.

I then asked Mr. Bofinger to take the release back and that he should at least give Stone a chance to see whether he would obey the rule or not, that had been outlined to him, and therefore did not sign the release paper.

Q. Several days after that talk which you have just described, did you have a further talk with Mr. Bofinger about Stone? A. Yes. Mr. Bofinger came again to my

1126

Hans E. Lasker—For Respondent—Direct

office with a release paper and Mr. Kress happened to be in my office at the time, and again asked me to authorize the release.

Q. Mr. Bofinger did? A. Mr. Bofinger asked me.

I again asked him, "Well, did the man obey the rules or did he not?"

He said, "He did not."

I asked Mr. Bofinger, "How do you know?"

He said that he had reports from his foremen that Stone had continued soliciting.

1127

I asked Mr. Bofinger, "Did you yourself see Sam Stone soliciting", and he said he did not.

I therefore told him to go back into the shop and if he himself saw Sam Stone soliciting he is to release him.

Q. Did you ever talk with Stone yourself? A. No.

Q. Did you approve a request for the release of Stone?

A. Yes, sir.

Q. Do you remember when that was? A. I don't recall the date. It was approximately—

Q. Well, with reference to—excuse me. Were you going to say something? A. I was going to say it probably was between three or four days from the first date that Mr. Bofinger saw me regarding Sam Stone.

1128

Q. Can you state when it was with reference to the second talk you had with Mr. Bofinger at which Mr. Kress was present? A. The exact date?

Q. When was it? Was it the same day that you talked to Mr. Bofinger and Mr. Kress that you finally approved his release? A. I approved the release that same day, asking Mr. Bofinger to make that effective as soon as he had himself observed Sam Stone soliciting.

Q. Does this Board's Exhibit 8-C bear your signature?

A. That is right, over the words "Rate change."

Q. The initials "H. L."? A. "H. L."

Hans E. Lasker—For Respondent—Direct

1129

Q. While we have this sheet here, did you also approve a request for the release of Robert Katz? A. Yes, the same initials, "H. L."

Q. Enrolled at the same place? A. Yes.

Mr. Rose: Mention the exhibit number, please.

Mr. Lumbard: 8-D.

By Mr. Lumbard:

Q. Now, Board's Exhibit 8-B, did you approve that? 8-B is with reference to Raymond Kahler. A. Yes, sir, that was approved by me by stamp on the release.

1130

Q. Did you personally approve it? A. I approved the stamping of the release personally.

Q. Did you authorize someone to stamp it for you? A. I authorized my secretary to stamp it.

Q. What about Board's Exhibit 8-A, with respect to Robert Bobrow? A. The same in that case, stamped by my secretary.

Q. The stamp must be very faint there.

Will you indicate where it is if you can see it? A. Yes, in the corner, right in there (indicating).

Q. In the lower left-hand corner? A. The lower left-hand corner.

1131

Q. Now with respect to Robert Katz did a request for his release come to your attention? A. Yes, sir.

Q. Was that some time prior to the date of this request which is January 23rd? A. Yes, sir.

Mr. Rose: What is the exhibit number, please?

Mr. Lumbard: Board's Exhibit 8-D.

The Witness: 8-D, yes.

By Mr. Lumbard:

Q. Can you state what happened at the time this request came to your attention? A. The first request that came to my attention, I was not in the office at the time; I

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Hans E. Lasker—For Respondent—Direct

happened to be in conference, and my secretary called, to know whether she could stamp the release of Robert Katz. I asked her over the phone what the particulars were and she did not know them; so I asked her to hold the release until I got back to the office, which would be shortly.

1133

When I got back to the office the release stated that the man was to be released for loafing. That is generally in my experience an unusual release, and I wanted to check further into the case. I got the personnel record of Robert Katz from the personnel department to see what type of man he was, and found that he was what we term an old time employee, having been with the company for approximately two years.

I also saw that about three weeks prior to this release slip having been made out, that Robert Katz had received an increase of 10 cents an hour.

I thought that probably something could be done to help this employee by having a talk with him. I therefore asked that Katz be brought to my office, and I had Mr. MacDonald, my assistant, and Mr. Mike Bruno, the parts plant superintendent present, when Mr. Katz came up.

Q. Did you have a talk with him at that time? A. Yes, I did.

1134

Q. Will you please tell us what happened? A. I showed Mr. Katz the release paper and asked him how it come that he is charged with loafing.

I mentioned to him apparently he had been with the company for two years and made fairly good headway.

I asked him if he would care to tell me what the difficulty seemed to be, whether his work was not satisfactory or whether he was having any trouble.

Katz told me he was having trouble; that he was being prosecuted. I asked him what he meant, and he said that all the foremen and supervisors were after him because of his union activities.

I asked him what sort of activities they were, and he said, "Well, everybody knows that I am a member of the union." He said, "Therefore, everybody is just haunting me."

I mentioned the specific charges made where he had spent 20 minutes at the tool room window. I asked him if he could explain that.

He told me that he had to exchange a drill on a particular job he was on. I somewhat questioned that it should take 20 minutes, but I gave Katz the benefit of the doubt.

I also asked him about charges of his loitering in the washroom, but he told me that he had spent no longer than was absolutely necessary in the washroom.

I then mentioned to Katz that I would be more than willing to give him another chance to prove himself that he can be the employee that the record apparently showed, and asked him if he would be willing enough to go down at the shop and give us the 10 hours work that he was being paid for, and Katz assured me that he would.

But he asked me, he said, "There is one specific question I would like you to answer."

I asked him what it was. He said, "Can I solicit during lunch periods, or, first of all, on my own time?"

I asked him what he meant by "his own time".

He said, "Either during the smoking period or lunch period." And in reference to the smoking period I told Katz that was not his own time since that is company paid.

I informed him that during the lunch period he is not to solicit, he is not to solicit at any time on company property.

I told him that outside of working hours, outside of company property he can do as he well pleases, but as long as he is within company property he is to obey our rules.

1138

Hans E. Lasker—For Respondent—Direct

Q. Did he ask whether he could talk to anybody about the union? A. Katz asked me whether he could talk about the union.

I told him that I am sure nobody would stop him, since this is a free country and speech is free, but he is not to solicit.

Katz wanted me to be more explicit about my word "soliciting", what I meant.

I told him "I mean that he is not to solicit for membership in the union."

1139

I mentioned the Masons, selling oranges, and gave some examples of that sort.

Katz then promised that he would go back to work and give us the 10 hours work for which he was being paid, and he left my office.

Q. Do you remember whether Katz was wearing any button at that time? A. No, sir, I don't recall.

Q. Was he wearing a steward's button at that time? A. No, he was not wearing a steward's button.

Q. You are sure of that? A. I am positive of that.

Q. Such a button as has been marked Board's Exhibit 15? A. No, he did not wear such a button.

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Q. What did you do with the request for release, Mr. Lasker? A. I tore it up in front of Katz.

Q. I would like to read to you from Katz's testimony on page 172 of the record and ask you whether any such talk as this occurred:

"He said," the "he", that means you, Mr. Lasker, "He pointed out that according to company rules you could not solicit, and I said, 'What do you mean by that?'"

"He said, 'Well, you can't talk about the union and you can't pass around application cards.'"

"Then I asked him the question, and I said, 'Let me get this straight. You say I can't talk about the union?'"

"I said, 'Suppose I am sitting eating my lunch during lunch hour and a friend of mine comes over to me and says,

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1141

hello Bob, how is the union going, what am I supposed to say to him according to company rules?' "

" 'You are supposed to say', he said,—that means Mr. Lasker, 'I am sorry, I can't speak to you. We are on company-property and please see me outside the company property before we can discuss the union.' "

Did you say that to him? A. No, sir. I did mention that he might solicit outside of company property, but in regard to the subject of whether he might talk about the union, I did not say that.

Q. Was there any talk at this time about union buttons? 1142
A. I don't recall any such talk.

Q. Is there any way in which you can fix the date of this talk that you have just described with Katz? A. Yes. That was January 13th.

Q. How do you fix that date? A. On January 14th my secretary told me that Katz, including some other people from the plant, had tried to arrange for an interview with me and she had a record of the January 14th date where Mr. Katz requested an interview.

I asked through my secretary whether Katz had seen his supervisor or superintendent and she reported that he had not.

1143

I therefore had him instructed that they should go and see their supervisor or superintendent first.

Q. That occurred subsequent to your talk with Katz?
A. That was following my talk with Katz, the next day.

Q. The next day? A. That is right.

Q. What is the date of your secretary's notes about that? A. January 14th.

Q. Therefore you first talked to Katz on January 13th?
A. January 13th, that being the day before.

Q. Now, did you some days later have another talk with Katz? A. Yes, I did.

1144

Hans E. Lasker—For Respondent—Direct

Q. Do you remember who was present at that time? A. Yes, Mr. Kress, Katz, Mr. Wilson and myself.

Q. Who was Katz's supervisor? A. Katz's supervisor, sectional supervisor is Mr. Doglione.

Q. Was he there? A. Yes, I believe he was there.

Q. Are you sure Mr. Wilson was there? A. Either Mr. Doglione or Mr. Wilson was there, one of the two gentlemen.

1145

Q. How did this talk come about, Mr. Lasker? A. Well, I had, first of all, the first request that Katz had made for an interview, I had heard after that about Katz had wanted to see me, and he arranged the interview after lunch. I forget the date, but I recall it was after lunch, and Katz was brought up to the office where Mr. Kress and I were waiting.

Q. Now, can you tell us what the talk was about? A. The talk in general, I believe I started the conversation by telling him that it was my understanding that he had been trying to see me for some time and that I had, first of all, instructed him indirectly to see his supervisor or superintendent; that I also had been tied up and that I would be more than glad to listen to his story.

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Katz mentioned grievances, and he also referred to a steward's button which he was wearing at that time.

He was informed by Mr. Kress that he is not to wear the button since the company felt it was a misrepresentation, and Katz assured us that unless he gets instructions, or he would not wear the button until he had further instructions which he told us he would get that evening from, as he put it, the union lawyer.

Q. Was there any talk about soliciting? A. Yes. Katz specifically asked again about soliciting and Mr. Kress pointed out to him that he is not to solicit, and again it was explained that what solicitations meant, I recall distinctly

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1147

that Mr. Kress mentioned soliciting for the Knights Pythias and other Associations.

Q. Where was he not to solicit? In any particular place? A. He was not to solicit on company property at any time.

Q. Was there anything said about talking about the union? A. Yes.

Q. Inside the factory? A. Katz again asked what he could do, and was told by Mr. Kress that he can certainly talk, that was his own opinion, and we would not question his opinion but that he is not to solicit.

1148

By soliciting Mr. Kress told him he meant handing out membership cards.

Q. Was anything said about the right of the union to organize? A. Katz mentioned that he felt that he had the right to organize, and Mr. Kress said he certainly had, but he pointed out to him until such time as they were organized, that we considered the wearing of steward's buttons as being a misrepresentation.

Q. Did you say anything to him about his wearing a steward's button? A. Yes.

Trial Examiner Hektoen: We will be in informal recess for a few minutes.

1149

(Recess taken.)

Trial Examiner Hektoen: Proceed.

Mr. Lumbard: May I have the last question read, please?

(Question and answer read.)

By Mr. Lumbard:

Q. When was that? A. I told Katz he is not to wear his steward's button and if he continues to wear it, that he would be discharged.

1150

Hans E. Lasker—For Respondent—Direct

Q. Thereafter was he discharged? A. He was discharged afterwards, yes, sir.

Q. Did you approve a request for his release? A. I did.

Q. Now, on January 26th it has been testified to here by Mr. Bobrow and Mr. Kahler that they had a talk with you and with Mr. Kress and Mr. Wilson.

Do you remember such a talk? A. I do remember it.

Q. Did Mr. Bobrow state at that talk, say to you what he and Mr. Kahler wanted? A. He opened the conversation by stating that he wanted to talk to us in reference to two employees, mentioning Sam Stone and Bob Katz, who had been released; he wanted to know if they could not be reinstated.

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Q. Was it pointed out to them why these two men had been dismissed? A. Yes, it was pointed out to them that they had been warned and they chose their own release by not following instructions.

Q. Now, with entering into the talk, was there some talk about the steward's buttons, the wearing of steward's buttons? A. Yes, there was talk about wearing steward's buttons, but it was mostly between Mr. Kress and Mr. Bobrow.

1152

Q. Now, with reference to Katz was anything said at this meeting about what Katz would do or would not do if he was reinstated? A. Yes. We asked Mr. Bobrow what Katz would do. Mr. Bobrow stated that he would continue to wear his steward's button.

Q. Do you know an employee named Vickmann? A. Yes, I do.

Mr. Rose: How do you spell that name, please?

Mr. Lumbard: V-i-c-k-m-a-n-n.

By Mr. Lumbard:

Q. Do you remember having a talk with him? A. Yes, I did have a talk with him.

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1153

Q. Can you state about when that was with reference to this talk that you had with Mr. Bobrow? A. That was the day following the release of Bob Bobrow.

Q. That would be the 27th of January. The record shows that they were released the 26th. A. It was the following day.

Q. How did you come to have this talk with Mr. Vickmann? A. Mr. Vickmann over the telephone requested an interview with me, which was granted, and Vickmann came up to the office.

I asked Vickmann what I could do for him, and he first off, stated that he had some grievances, and explained to me that in the jig shop where Vickmann was working there had been a circular or clipping from a newspaper posted on one of the bulletin boards which he stated was anti-union. 1154

I asked Vickmann if he could tell me whether that particular paper was posted by the management of the company or whether some employee might have posted it there.

He stated that it was not an official company paper but apparently somebody had put it on the bulletin board and it was annoying to him.

I assured him that the paper would be removed.

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He then told me that he was somewhat in a spot himself; that he had been selected to take Mr. Bobrow's position as steward, and he also wanted further clarification as to the wearing of such buttons in the plant.

I explained to Mr. Vickmann that Mr. Bobrow had been released for just that purpose, and that if he is caught wearing it, that he also will be discharged.

Mr. Vickmann told me he was not wearing it because he had left it in his coat that morning and had not used his own car anyway.

He also stated that he would go back to the union lawyers and tell them that in his opinion he felt that there were

1156

Hans E. Lasker—For Respondent—Direct

enough people released for test cases without he himself losing his job.

Q. Did you thereafter check up in any way as to whether Mr. Vickmann was wearing a steward button? A. Yes; I called his sectional supervisor and asked him to check.

Q. Were you told as to whether or not he was wearing a button? A. They reported back that he is not wearing a button.

1157

Q. I am not quite whether you told us how Mr. Vickmann said it to you that he was to wear a button or that he was going to wear a button. A. He told me that he was on the spot; that he had been selected to report—to take Mr. Bobrow's place, and that he was to wear the steward's button.

Q. And he had been told to; is that the idea? A. He told me he had been told to wear a steward's button.

Q. Have you, Mr. Lasker, ever tried to find out which employees were members of the union? A. No, sir.

Q. Have you ever approved of the discharge of any employees because he was a member of the union? A. No, sir.

1158

Q. Was there a time when you heard about the distribution of certain circulars by the union outside the plant? A. Yes.

Q. Can you fix about when that was? A. That was approximately the fall of last year, 1942.

Q. It was before the talks that you have told us about? A. That is right.

Q. Did you ever make any attempt to find out which, if any, employees at the plant were distributing those leaflets? A. No, sir.

Q. Did you ever talk to any employee with respect to his joining a union? A. Yes, I recall one occasion where I informed an employee that was entirely up to himself

Hans E. Lasker—For Respondent—Direct

1159

Q. Who opened that conversation, you or the employee?

A. The employee approached me, stopped me on the floor.

Q. Other than that did you ever talk to an employee about whether he should or should not join a union? A. No, sir.

Q. Who in the company determines the policy of the company with respect to relations with employees on such matters as union organizing and grievances, and things of that sort? A. The industrial relations branch.

Q. Who is in charge of that? A. Mr. Kress.

Q. Have you at any time instructed your supervisory force about these matters? A. Yes, I have. 1160

Q. With respect to the circulation of handbills can you state whether or not you ever talked about these matters at any of your meetings of your supervisory force? A. Yes, I did. I was asked what stand the supervisors are to take, and I informed my superintendents and department heads that in all relations with men they are not to let the union influence them in their positions.

Q. What about their attitude toward employees as to whether or not they were union members? A. They were not to judge an employee by membership in the union, but strictly by their merits and demerits. 1161

Q. Did you say anything about expressing any opinions with respect to the union? A. I asked them that they are not to express any opinions.

Q. Did you give your superintendents any instructions as to whether they were to pass along any instructions to other men in the plant? A. Yes. I contacted Mr. Kress, for a special meeting of all sectional supervisors and superintendents, so that the case may be made clear to them, and they would have full understanding of what was expected.

That meeting was called by Mr. Kress of our supervisory sectional supervisors and superintendents and both the day and night shifts attended the meeting.

1162

Hans E. Lasker—For Respondent—Cross

Q. Can you state about when that was? A. Approximately the early part of January.

Q. Of this year? A. Of this year.

Mr. Lumbard: You may examine.

Cross examination by Mr. Rose:

Q. Who is your immediate superior, Mr. Lasker? A. The general manager.

Q. What is his name? A. Pardon?

1163

Q. What is his name? A. Mr. Marchev.

Q. Is Mr. Kress your superior? A. No, sir. Mr. Kress is head of the industrial relations department, and has no direct bearing on the manufacturing department.

Q. You don't come under his jurisdiction at all so far as manufacturing? A. No.

Q. Without disclosing any military information can you give us any idea as to the number of employees in the plant, that is, in the factory part of the plant? A. I am afraid I cannot disclose that.

1164

Mr. Rose: I wonder if there is any way we can get some information on that? I think the record should show something on that.

Trial Examiner Hektoen: Off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

Let the record show there are several thousand employees at the Farmingdale plant, are there not?

The Witness: That is correct.

Trial Examiner Hektoen: All right.

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1165

By Mr. Rose:

Q. You pointed out your signature or initials on a release or personnel change request for Stone.

I wish you would point that out to me. A. Right here. (Indicating.)

Q. Referring to Board's Exhibit 8-C? A. 8-C.

Q. Is that the original document which you initialed?

A. I have only the original, unless a carbon copy happened to be attached.

Q. This is a photostat as you can see. A. That is right.

Q. As far as you know is that a photostat of the original document? A. As far as I can tell it is.

Q. And that was initialed by you on the first occasion it was brought to you; is that right? A. No, sir, on the second occasion.

Q. On the second occasion? A. That is right.

Q. On how many occasions were releases or personnel change requests presented to you?

Mr. Lumbard: With respect to whom?

By Mr. Rose:

Q. Stone. A. A total of three.

Q. When was the first one presented to you? A. I don't recall the date but that request I did not approve.

Q. How many times did Mr. Bofinger speak to you about Stone? A. On two occasions.

Q. When was the first occasion? A. When he asked me to approve the first release paper.

Q. Can you fix the approximate date? A. I am afraid I cannot, sir.

Q. Can you give us the month? A. It was in January.

Q. What part? A. Roughly I would say the middle of January.

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Hans E. Lasker—For Respondent—Cross

Q. When was the second occasion that Mr. Bofinger spoke to you concerning Stone? A. It was the second time he presented the release paper.

Q. When was that? A. That was about three or four days after the first incident.

Q. When was the third personnel change request presented to you? A. That was the day following the one I had approved.

1169 Q. Well, did you approve one on that occasion, Mr. Lasker? A. No, on the first occasion I did not approve it; on the second occasion I did.

Q. Was the second occasion when you asked him whether he had seen Stone passing out cards? A. That was right.

Q. That was the occasion you approved it? A. That is right. When I approved the release paper I asked him to put it into effect as soon as he himself had observed Stone soliciting.

Q. By approval you refer to your initials? A. My initials.

Q. Did Mr. Bofinger on the occasion when you initialed the release tell you that he had not seen Stone soliciting? A. He had not seen it.

1170 Q. That was what he said? A. He had not seen him.

Q. Now, was there another occasion when Bofinger spoke to you about Stone? A. No, sir.

Q. Let me understand you. The occasion when Bofinger said he had not personally observed Stone soliciting occurred when? A. May I have the question again?

Mr. Rose: Will you read it, please?

(Question read.)

The Witness: That was the second time Mr. Bofinger spoke to me about Sam Stone.

By Mr. Rose:

Q. Can you fix the time approximately? A. I would say it was about three to four days after the first time Mr. Bofinger spoke to me. I can't exactly fix the date. I would say it was about the middle of January on the first occasion. Therefore, this occasion would probably be in the neighborhood of the 18th or 20th of January on the second occasion.

Q. Now on the second occasion did Mr. Bofinger tell you that he had warned Stone? A. He told me that on the first occasion.

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Q. On the first occasion he told you that he had warned Stone? A. Yes, sir.

Q. Well, on the first occasion did he say anything as to whether he had seen Stone soliciting? A. He did not say that.

Q. Well, what did he say on the first occasion? A. Then he had reports of Mr. Stone soliciting; that he had called him to the office and pointed out the company regulations to him and asked him not to do it.

Q. Then a few days later he saw you again? A. That's right, sir.

Q. Now, when was the first time you had the talk with Katz? A. That was on January 13th.

1173

Q. Was it in the morning or in the afternoon, so far as you recall? A. It was in the afternoon.

Q. When did Katz make an effort to see you? A. The following day, January 14th.

Q. Did he try to see you alone or with anyone else? A. I did not see Mr. Katz but I understand Mr. Katz and another man in the shop, whose name I do not remember, asked for an appointment.

Q. And when did you actually see Katz again? A. I would approximately set it at a week after my first talk with Mr. Katz.

1174

Hans E. Lasker—For Respondent—Cross

Q. Now, you referred to the occasion about a man speaking to his sectional supervisor before he sees you. A. That's right.

Q. What were you referring to? Is there some rule about that? A. Yes. Our company rule generally asks for the employee to see his nearest or next supervisor first, in which case he would see his foreman, after the foreman the supervisor, and so on up.

1175

Q. Now, when, among members of management, so far as you know, was there any talk about the prohibition of the wearing of steward's buttons? A. May I have that question, please?

Q. Strike the question. When for the first time did you know that steward's buttons would not be allowed to be worn in the plant? A. That was a policy set up by the industrial relations department. Do you want me to try and fix the date?

Q. Yes. A. I would say about January, the middle part of January, when it was brought to my attention, when I, myself, heard of the policy.

Q. And how did you learn of the policy? A. Mr. Kress told me about the policy.

1176

Q. Did you receive any written memorandum on it? A. No, sir.

Q. When, for the first time, did you hear that no steward's button was to be worn by an employee? A. That was about the same date that I spoke to Mr. Katz on the second occasion.

Q. And from whom did you get the report? A. I don't recall.

Mr. Lumbard: Would you read me the question before the last, please? I didn't quite get it.

(Record read.)

Hans E. Lasker—For Respondent—Cross

1177

By Mr. Rose:

Q. Can you fix the day a little more definitely, Mr. Lasker? A. I am sorry, I can't. If I could recall where I got the report I might be able to fix the day.

Q. Well, was it before or after you spoke to Katz on the second occasion? A. It was after my first occasion, my first talk with Mr. Katz.

Q. Was it prior to your second talk with Mr. Katz? A. I would say it was prior to my second talk with Mr. Katz.

Q. It was sometime between the first and the second talks with Mr. Katz; is that right? A. Approximately.

1178

Q. Now, on the occasion of the first talk with Mr. Katz, did he mention anything about the wearing of a button?

Mr. Lumbard: On what occasion was that?

Mr. Rose: The first talk.

The Witness: I don't recall it.

By Mr. Rose:

Q. I am talking, of course, about a CIO button. You understand that? A. Yes; I realize that.

Q. On that first occasion do you recall whether or not you mentioned anything about a CIO button? A. I don't recall.

1179

Q. You have no recollection as to whether buttons were mentioned at this first talk with Mr. Katz? A. I don't recall any buttons being mentioned at that time.

Mr. Rose: No further questions.

By Mr. Rubenstein:

Q. You stated something about a meeting with supervisors which was held sometime during the early part of January, 1943; is that right? A. That is correct, sir.

Q. You proceeded— A. May I correct that? That was superintendents and department heads.

1180

Hans E. Lasker—For Respondent—Cross

Q. Superintendents and department heads? A. Yes. I believe you said supervisors.

Q. That's right. A. No, I meant superintendents and department heads.

Q. What is the difference between a supervisor and superintendent? A. The direct shop supervision is called supervisors, falls under a supervisor. The superintendent is in charge of a group of shops.

Q. And how many superintendents were present at that meeting? A. There were three superintendents plus three department heads, including my assistant.

1181 Q. And who presided at that meeting? A. I presided.

Q. And what did you tell the meeting then? A. Well, of course, it was a general production meeting, general meeting, but during the meeting I discussed the question of the action to be taken in reference to the union. There had been a number of questions brought to me, and, in order to get everyone to understand our position, I laid down the policy that they are to follow.

Q. And what policy did you lay down? A. That in dismissals or in making changes of personnel they are not to take the union into consideration in any way, but that each man is to be judged by his own merits.

1182 Q. Did you at any other superintendents' meeting before the early part of January, 1943, take up the question of the union? A. No, sir.

Q. This was the first time in your plant that the question of a union was discussed? A. As far as I was concerned.

Q. As far as the superintendents' meetings were concerned? A. To my knowledge, yes.

Q. How often do you have those superintendents' meetings? A. Once a week and occasionally more.

Q. But at least once a week? A. At least once a week.

Q. And how are the decisions of the superintendents'

Hans E. Lasker—For Respondent—Cross

1183

meetings submitted to the lower supervisory personnel? A. The superintendents, in turn, have their meetings with the sectional supervisors.

Q. And general supervisors? A. Section supervisors.

Q. Don't the general supervisors have meetings? A. We don't have general supervisors. We have sectional supervisors.

Q. And they tell the sectional supervisors the decisions or instructions on policy? A. That is correct.

Q. And do you know whether such section supervisory meetings were held after you laid down the policy of the company? A. Yes, sir.

1184

Q. Were you present at any of those meetings? A. Yes, sir; I was present.

Q. At all of them? A. Not at all meetings. I was present at the particular meeting where the company's policy, in regard to the union was made plain to all sectional supervisors.

Q. And that was during the month of January, 1943? A. That is correct, sir.

Q. And can you tell us what made you take up the question of unionism or unions during January 1943? A. I can only assume that the distribution of leaflets had brought up questions in our supervisory staff.

1185

Q. Were there any reports made to you, or to anyone else, to your knowledge, that solicitation of union members was going on in the shop? A. The first report of that came to me through Mr. Bofinger regarding Sam Stone.

Q. Do you remember the day? A. I can't recall it exactly, no, sir. It was sometime in January.

Q. Sometime in January? A. Yes, about the middle of January.

Q. Was it prior to your meeting with the superintendents or subsequent to the meeting? A. That was subsequent.

1186

Hans E. Lasker—For Respondent—Cross

Q. Subsequent to the meeting with the superintendents?
A. Yes.

Q. Do you remember the approximate day when Mr. Bofinger spoke to you? A. Pardon?

Q. The approximate day when Mr. Bofinger spoke to you. A. Regarding Sam Stone?

Q. That's right. A. I fixed it before at about the middle of January.

Q. The middle of January would be about the 15th of January? A. That's right.

1187 Q. Before that day he did not speak to you? A. No, sir.

Q. Nor did anyone else tell you about solicitation in the shop? A. Not that I recall.

Q. Did anyone speak to you about some employees wearing union buttons in the shop before Mr. Bofinger spoke to you? A. No, sir.

Q. Did you, yourself, see anyone in your shop wearing union buttons before that day? A. No, sir.

Q. Now, on that—cross that.

Can you at this time make a more exact statement as to the approximate day of that meeting with superintendents? A. It was the first pep meeting that we had in 1943, so I would fix it during the first week in January, approximately.

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Q. And during that meeting did you discuss the question of what should be the attitude of your superintendents to employees soliciting membership cards? A. Not during that meeting.

Q. So what actually did you tell your superintendents? A. I merely told them that in all their actions regarding their employees they are not to consider the union in any way but to judge their employees by their work and by their merits, or by demerits, but not to let the union influence them one way or another.

Q. And you told them not to give as the reason union activity for a discharge? A. No, sir.

Q. You told them not to do so; is that it? A. I did not.

Mr. Lombard: He never said any such thing and I object to counsel's misleading questions and insinuations.

Trial Examiner Hektoen: Will you be good enough to read that, Mr. Reporter?

(Question read.)

Mr. Lombard: You mean you never said any such thing, do you not, Mr. Lasker?

The Witness: Yes, sir; I did not.

1190

Trial Examiner Hektoen: That is still under objection. It is overruled.

By Mr. Rubenstein:

Q. At any rate, in the first week of January, 1943 you and the superintendents were aware that union activities were going on in the shop? A. Yes, sir.

Q. And the question of union activities became a problem for management? A. Not necessarily.

Mr. Lombard: There is no testimony to that effect.

Trial Examiner Hektoen: What was the answer?

1191

The Witness: Not necessarily.

By Mr. Rubenstein:

Q. Well, you took it up at your management meeting, at your superintendents' meeting? A. That is correct.

Q. So it was some problem you had to solve or deal with?

Mr. Lombard: I object to the form of the question. It is arguing with the witness.

Trial Examiner Hektoen: Is there any question but that it wouldn't have occurred to anyone to bring

1192

Hans E. Lasker—For Respondent—Cross

it up at the meeting unless it was a problem in fact?
I don't think this argument is necessary.

Mr. Rubenstein: You said that on the 13th you had a discharge request or a request for release submitted to you regarding Robert Katz?

The Witness: That's right, sir.

By Mr. Rubenstein:

1193

Q.-What makes you sure of the date? A. Because the day following my talk with Mr. Katz he asked for an interview, and that date is recorded in my secretary's book as January 14th, shortly after eight o'clock.

Q. In the morning? A. In the morning.

Q. When did you see Mr. Katz the first time? A. On January 13th.

Q. On January 13th? A. When I had my talk with him.

Q. You called him into your office? A. That is correct.

Q. And on the 14th you say he asked to be seen? A. He asked for an interview again.

Q. And when did you interview him again? A. Not until approximately a week later.

1194

Q. Not until when? A. I did not see Mr. Katz again until approximately a week after.

Q. But you refused his request for an interview on the 14th? A. I did not refuse it.

Q. But you have not seen him? A. I asked Mr. Katz, through my secretary, to first contact his supervisor and superintendent.

Q. It is the policy of the company management to refuse an interview to an employee unless he has first contacted the subordinates? A. If an employee cannot get satisfaction through his direct supervisors he is entitled to an interview with the factory manager or president of the company, for that matter.

Hans E. Lasker—For Respondent—Cross.

1195

Q. Mr. Wilson, if I remember correctly, testified that anyone wishing to see any head of the company, they can go up and see them. Was he wrong in his testimony?

Mr. Lumbard: There is no basis for asking that question.

Mr. Rubenstein: I want to know what this witness has to say about that question.

The Witness: May I have the question?

Trial Examiner Hektoen: Just a moment. Yes, you may answer the question.

The Witness: May I have the question again, please?

1196

Trial Examiner Hektoen: Read it.

(Record read.)

The Witness: No, sir; he was right in his testimony.

By Mr. Rubenstein:

Q. So that any one of the employees, they could request to see Mr. Lasker without first having to see subordinates of Mr. Lasker? A. Providing they request.

Q. Well, did Mr. Katz request to see you? A. No, sir.

1197

Q. Didn't you testify that your secretary gave you a message that Mr. Katz requested to see you? A. That is right.

Q. So he did request to see you? A. Through the secretary, but not through his supervisor.

Q. Oh, he has got to go to a supervisor first to request to see you; is that right? A. That is correct.

Q. And if the supervisor does not permit him to see you— A. If the supervisor can help him it will not be necessary to send him up.

1198

Hans E. Lasker—For Respondent—Cross

Q. So that an employee cannot decide that he would like to see the head before going and placing his problem before the subordinates; is that right? A. An employee may decide to do that but the policy is to ask permission from his direct superior.

Q. And if he does not ask permission the supervisor or the factory manager refuses to see him until he does ask permission? A. That is correct.

Q. And that has been your policy all the time? A. That is right.

1199

Q. And the policy of the company? A. That is right.

Q. Now, when you next saw Mr.—strike that out.

Now, on that day that you were given a release request for discharge of Mr. Katz, you say that it contained the words "Loafing on the job"? A. It said, "Loafing."

Q. And you felt that this was not a sufficient reason to discharge him; is that it? A. Not necessarily. It is unusual to have requests coming through for dismissals of employees because of loafing.

Q. Will you repeat your answer? A. It is unusual.

Q. You mean very few people, very few foremen, discharge an employee for loafing; is that right? A. Yes, sir.

1200

Q. And in this case something unusual occurred; is that it? A. Not necessarily. It is an unusual request for dismissal, loafing.

Q. And you felt that a request for dismissal for loafing was somewhat unusual? A. The request for dismissal was unusual, stating the case of loafing.

Q. And you called the man and had a talk with him; is that it? A. That's right.

Q. And you are sure that this was on the 13th? A. Yes, sir.

Q. Mr. Katz, I understand, if I am correct, testified that the first conversation he had with you was on the 15th.

Mr. Lumbard: He did not.

By Mr. Rubenstein:

Q. The 14th. A. I don't know what Mr. Katz testified.

Q. But you are certain it was the 13th; is that it? A. That is correct, sir.

Q. And during your conversation with Mr. Katz the question of his union activities came up; is that it? A. Yes, sir; he mentioned it.

Q. Did he tell you anything about his being hounded by the foremen? A. Yes, sir.

Q. For his union activities? A. Yes, sir.

Q. And did he tell you that he felt this request for his discharge was the result of union activities? A. No, sir; he didn't say the result of union activities.

Q. Did you tell him that there was a request for his discharge? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. And he didn't say he thought it was for his union activities? A. He said that he thought he was being persecuted for his union activities.

Q. Then you had a conversation with him about soliciting; is that right? A. That is correct.

Q. And he asked you: Suppose a man comes over to me and asks me what about the union, what shall I tell him? A. I don't recall him saying that.

Q. You don't recall him saying that? A. No.

Q. At any rate, you have destroyed that request for his discharge? A. Yes, sir.

Q. You told him to go back to work? A. Yes, sir.

Q. And when was Mr. Stone discharged—Mr. Katz—I am sorry. A. It was the day following my second interview with Mr. Katz.

Q. Following your second interview? A. My second interview.

Q. When was that second interview? A. I can't fix the

1204

Hans E. Lasker—For Respondent—Cross

date exactly, but I would say it was approximately a week after my first talk with him.

Q. How did the second interview come about? A. Mr. Katz had, as I stated before, requested an interview for the 14th. I had heard no more about it, that interview, whether he had seen his supervisor or superintendent, but I did receive word that Mr. Katz was anxious to speak with me and, therefore, arranged for a second interview.

1205

Q. You say you did receive word. Who did you receive word from? A. I don't recall exactly. It might have been through my secretary or through other sources. I can't state exactly.

Q. You don't know who told you that? A. I don't recall it.

Q. Well, if it was through your secretary, you would have found a notation on your desk? A. Either that or she might have told me.

Q. Does your secretary take notations for you of messages that come in your office? A. Yes, sir.

Q. Where does she put those notations down? A. On a regular stenographer's pad.

1206

Q. On a regular stenographer's pad or on a calendar? A. Or on a calendar, depending on the notations to be made.

Q. What do you mean, depending on the notations to be made? A. Well, if it is something that can be left for me on my desk it would be only on notation paper. If it is something she can convey to me personally she will make a notation on her pad and convey it to me.

Q. Well, a call, let's say, a second call by Mr. Katz to the effect he would like to see you, would such a message be held in her notebook or on your diary or calendar? A. I don't know where the request originated or who related it to me; I can't say.

Q. Now, the first request was also given to you by your secretary? A. The first request for the interview on the 14th was given to me by my secretary.

Hans E. Lasker—For Respondent—Cross

1207

Q. That's right; and that request was made to you by Mr. Katz? A. No; that request was given to me verbally by my secretary.

Q. But she told you that Mr. Katz asked to be seen? A. That is correct.

Q. Did your secretary make any notation of his request? A. Yes, sir.

Q. Where did that notation appear? A. On a notebook.

Q. On a stenographer's notebook? A. A stenographer's notebook. There were two names, as I recall, Mr. Katz and another name which I do not recall.

1208

Q. You do not recall the other name? A. No, sir.

Q. What makes you recall Mr. Katz's name? A. Because it is rather an easy name to remember.

Q. It did not appear on your calendar, did it? A. No, sir.

Q. It did not appear on your diary, if you have a diary? A. No, sir.

Q. What makes you so certain this was on the 13th or the 14th, what makes you certain as to the date?

Mr. Lumbard: The date of what?

By Mr. Rubenstein:

1209

Q. Of your first interview with Mr. Katz. A. Because the interview was requested on the 14th. Therefore, the interview having been the day following, it must have been the 13th.

Q. How do you know the interview was requested on the 14th if it didn't appear on any diary or calendar?

A. It was on a notebook of my secretary.

Q. And does that notebook contain the date when it was taken? A. Yes, sir.

Q. And did the second request from Mr. Katz contain the date that he made that request to your secretary? A.

1210

Hans E. Lasker—For Respondent—Cross

I don't know whether Mr. Katz made the request to my secretary or to whom.

Q. Now, when Mr. Katz was finally discharged, what was the reason for his discharge? A. For wearing a steward's button.

Q. For wearing a steward's button? A. That's right.

Q. And not any other reason? A. Well, for infraction of the company rule which had been made plain to him, wearing a steward's button.

1211

Q. Now, you said that Bofinger had told you—cross that out.

Bofinger gave you three releases for Mr. Stone; is that right? A. Bofinger personally gave me three releases?

Q. Submitted three releases, on three occasions.

Mr. Lumbard: I don't think the witness said that.

Mr. Rubenstein: My mistake on that.

By Mr. Rubenstein:

Q. Now, when was the first time Bofinger asked you to approve a release of Stone?

1212

Mr. Lumbard: Your Honor, I think Mr. Rubenstein has gone into this before. There was quite some talk at the beginning of his examination as to when it was in January and what he said.

Mr. Rubenstein: By this witness, about Stone?

Mr. Lumbard: Yes.

Mr. Rubenstein: I didn't ask one question of this witness about Stone, except when I made a mistake.

Mr. Lumbard: Maybe I am wrong.

Mr. Rubenstein: What was the question?

(Record read.)

Hans E. Lasker—For Respondent—Cross

1213

The Witness: It was about the middle of January.

By Mr. Rubenstein:

Q. About the 15th? A. Approximately.

Q. Was that before you spoke to Mr. Katz or after you spoke to him? A. That was after I spoke to Mr. Katz.

Q. After you spoke to Mr. Katz? A. Yes, sir.

Q. And the reason given by Bofinger for the request for the release was that Stone solicited the union members? A. That, and also that he felt that Sam Stone would not obey company regulations nor his advice.

1214

Q. That was on the 15th of January? A. About the 15th.

Q. The first time he saw you; is that right? A. The first time he saw me, yes.

Q. And what did you say? A. I questioned him about the details of the case.

Mr. Lumbard: I am sorry. I didn't get that question.

(Record read.)

Trial Examiner Hektoen: This was on the first meeting? 1215

The Witness: I questioned him regarding the details of the case.

By Mr. Rubenstein:

Q. What did you tell him? Will you tell us your conversation and his conversation on that first occasion on January 15th? A. He told me that Sam Stone had been soliciting. He told me that on the basis of reports that he, himself had received. He told me that he had called Sam Stone in his office and explained to him our company regula-

1216

Hans E. Lasker—For Respondent—Cross

tion and asked him to discontinue soliciting. He told me that he felt, after his talk with Sam Stone, that Sam Stone would not regard his advice but would continue.

Q. And what did you say then? A. I told him that he should give the man a chance, find out whether he will follow his advice or not.

Q. And did Mr. Bofinger say anything in reply to your instructions? A. Yes; he did. I did not O. K. the release.

Q. Did he say anything, Mr. Bofinger? A. He said he would.

1217

Q. He would obey your instruction? A. Yes, sir.

Q. And all this conversation occurred on the very first time that Mr. Bofinger brought you the request for the release of Sam Stone? A. On the first occasion, yes.

Q. On the first occasion—that was January 15th? A. Approximately January 15th.

Q. When was the second occasion that you saw Mr. Bofinger? A. It was about three to four days after that.

Mr. Lumbard: You mean about this particular matter?

By Mr. Rubenstein:

1218

Q. About Mr. Stone's release—about three to four days after that? A. Approximately three to four days after that.

Q. That would be either the 18th or the 19th? A. About that.

Q. And what did he tell you then? A. He again had the release papers in his hand and asked for approval.

Q. The same release papers? A. I don't know whether it was the same paper. He had a release slip for Sam Stone.

Q. And asked for approval? A. Yes.

Q. And what did you say? A. I asked him to see that he personally observed Sam Stone soliciting.

Q. And what did he say? A. He said he would.

Q. Did you ask him on that second occasion whether or not he did see personally Sam Stone? A. I did.

Q. And what did he say? A. He said he had not personally observed Sam Stone.

Q. And then you told him what? A. I told him that he should see Sam Stone personally soliciting and when he does he is to dismiss him.

Q. And did you do anything on that day with respect to the release? A. I signed the release.

Q. On that second occasion? A. Yes.

1220

Q. And when was the third time Mr. Bofinger saw you with respect to Sam Stone? A. Mr. Bofinger didn't see me a third time.

Q. Oh, he didn't see you the third time? A. No, sir.

Q. Do you know how long it was after your second conversation with Mr. Bofinger that Sam Stone was released? A. No; I don't know myself.

Q. You don't know when he was finally discharged, do you? A. Well, I can't personally vouch for the exact hour when Sam Stone was released.

Q. Can you vouch for the day? A. I would say it was either the same day or the following day.

1221

Q. Wasn't a report given to you after he was discharged? A. No, sir.

Q. So that when you signed the release discharge of Sam Stone you did it on a statement by Mr. Bofinger that he did not see Sam Stone soliciting union cards; is that right? A. No, sir. I signed a release with the specific request that he is to make it effective when he observed Sam Stone.

Q. And, assuming that he did not observe Sam Stone soliciting, what was your intention with regard to the release? A. The release would not have gone through.

1222

Hans E. Lasker—For Respondent—Cross

Q. Well, did you then check whether Bofinger followed your instructions? A. Yes.

Q. When was that? A. It was the following day.

Q. What happened the following day? A. Sam Stone—

Q. Excuse me; strike that question.

The following day after what? A. The following day after my second approach from Mr. Bofinger, or after Mr. Bofinger's second approach.

Q. What happened then? A. I don't know what happened. I don't follow your question.

1223

Trial Examiner Hektoen: His question is how did you check whether he followed your advice.

The Witness: I checked Mr. Bofinger and he told me that the release had gone through and that Sam Stone had been released.

By Mr. Rubenstein:

Q. Where did you see Mr. Bofinger the day after the second time you saw him? A. I did not see Mr. Bofinger.

Q. How did you check it with him? A. By phone.

Q. You spoke to him over the telephone? A. That is right.

1224

Q. You called him? A. Yes, sir.

Q. What did you ask him? A. What happened in the case of Sam Stone.

Q. What did he say? A. He said Sam Stone was released.

Q. Is that all he said? A. That is all.

Q. And that was the end of the conversation about Sam Stone? A. That's right.

Q. And you took it for granted, because he said Sam Stone was released, that he saw him personally doing it; is that it? A. Yes, sir. I trust my supervisors.

Hans E. Lasker—For Respondent—Redirect

1225

Q. But you didn't ask him whether he saw him personally soliciting membership? A. Mr. Bofinger had those instructions from me already.

Q. You took it for granted he would carry them out? A. I know he would carry them out.

Q. How do you know? A. Because my supervisors carry out my orders.

Mr. Rubenstein: That is all.

Trial Examiner Hektoen: Any redirect?

Redirect examination by Mr. Lumbard:

1226

Q. Mr. Lasker, you have testified that the second time you talked to Mr. Bofinger he said that he had not personally seen him? A. That he did not personally see him soliciting.

Q. That he did not personally see him soliciting. Now, was that with reference to seeing him after any previous occasion? A. Mr. Bofinger had reports of Sam Stone's solicitations on all occasions up to my second interview with him.

Q. Now, as I understood, from your first talk with Bofinger about Stone you instructed him that he, having given the warning on the 15th, that he should personally observe him after that? A. At my first interview with Bofinger I told him he should give the man a chance, after having given him the warning, before taking action.

1227

Q. And you did not then instruct him as to whether he should personally see him or not? A. I believe I did.

Q. Oh, you did? A. But I know I definitely did on the second occasion.

Q. So what you were inquiring into was whether Bofinger had personally seen Stone soliciting subsequent to the time when he warned him.

Mr. Rose: May I have that read?

Trial Examiner Hektoen: Yes; read it, please.

1228

Hans E. Lasker—For Respondent—Recross

(Record read.)

The Witness: That was not my first talk with Bofinger. That was my second talk.

By Mr. Lumbard:

Q. That was on your second talk? A. That is correct.

Q. What you were interested in was whether he had personally seen Bofinger soliciting after warning him the first time? A. Yes, sir.

1229

Q. Is that correct? A. Yes, sir.

Q. You were not concerned with whether or not Bofinger had seen him soliciting prior to the warning he gave Stone? A. No, sir; I was not.

Q. When you said Bofinger said he had not seen him soliciting, you were referring to the time after Bofinger had given him the warning; is that right? A. Yes, sir.

Mr. Rose: Mr. Examiner, all these questions are leading.

Mr. Lumbard: I don't know how I could direct his attention to it.

Trial Examiner Hektoen: If there is an objection, Mr. Rose, I will overrule it.

1230

Mr. Lumbard: That is all, your Honor.

Mr. Rubenstein: One more question.

Recross examination by Mr. Rubenstein:

Q. You heard Mr. Bofinger testify this morning? A. I heard part of his testimony.

Q. Were you present when Mr. Bofinger testified that he warned for the first time Mr. Stone on the day of his discharge?

Mr. Lumbard: What do you mean by the day of his discharge, Mr. Rubenstein? I think you are misstating—

Hans E. Lasker—For Respondent—Recross

1231

Trial Examiner Hektoen: Read it, Mr. Reporter.

Mr. Rubenstein: I withdraw the question.

Mr. Lumbard: You are withdrawing it?

Mr. Rubenstein: Yes.

Trial Examiner Hektoen: Anything else?

Mr. Rose: I have one or two questions.

By Mr. Rose:

Q. Mr. Lasker, do you have anything to do with the drawing up of rules and regulations for the employees? A. I don't follow you. With what do I have anything to do? 1232

Q. As I understand you, your company has certain rules you want employees to follow; is that right? A. Yes, sir.

Q. Do you have anything to do with the making up and deciding what those rules shall be? A. Not on general company policy, if that is what you are referring to, but there are rules that the factory management itself originate which do not pertain directly to company policy.

Q. What type rules do you originate? A. The rules pertaining to production.

Q. And the type of rules relating to company policy, as you call it, originate where? A. In the industrial-relations department. 1233

Mr. Rose: That is all.

Trial Examiner Hektoen: Thank you very much,

Mr. Lasker.

(Witness excused.)

Trial Examiner Hektoen: We will have a short recess.

(Recess taken.)

Trial Examiner Hektoen: We will proceed.

Mr. Lumbard: Mr. Mac Donald.

1234 *Henry Joseph Mac Donald—For Respondent—Direct*

HENRY JOSEPH MAC DONALD was called as a witness by and on behalf of the respondent and, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lombard:

Q. Mr. Mac Donald, you are employed by Republic Aviation Corporation? A. That's right.

Q. What is your position? A. Assistant factory manager.

1235 Trial Examiner Hektoen: Your full name first, Mr. MacDonald.

The Witness: Henry Joseph MacDonald.

Trial Examiner Hektoen: Any address for the record?

The Witness: 240-14 Mayde Road, Rosedale, Long Island.

By Mr. Lombard:

Q. How long have you been assistant factory manager? A. Approximately nine months.

Q. How long have you been connected with the company? A. Five years.

1236 Q. Do you remember an occasion in January of this year when you were asked by Mr. Lasker to go to his office and when you got there you met an employee named Katz? A. Yes.

Q. Do you have any way of telling us about when that was in January? A. About the 13th of January.

Q. Will you state, please, who else was there? A. Mr. Bruno, parts plant superintendent, Mr. Lasker and Mr. Katz.

Q. Now, will you please tell us what happened at that time? A. Mr. Lasker asked me to come into his office and said he was interviewing a man from the shop named Mr. Katz whom we had released, or whom he had a release for on his desk.

Henry Joseph Mac Donald—For Respondent—Direct

1237

Mr. Katz and Mr. Bruno came in the office after I had gotten there. Mr. Lasker said "Hello, Mr. Katz. What is the trouble? I have a release here for you. I want to find out what is wrong. What do we have to make out a release for loafing for you for? You are a two-year employee. We consider that quite an old employee in our company. I want to know what happened. In view of the fact that you had received a raise about two weeks previously it seems to me something must have gone wrong."

Mr. Katz said he felt he had not been loafing but was being persecuted. Mr. Lasker then brought to his attention a few instances that had been told to Mr. Lasker as to why they considered the man loafing and why they had released him.

1238

Q. Well, they hadn't released him yet. A. No—well, they had released him prior to Mr. Lasker's O. K. on it; that they were going to release the man, rather. One of the reasons was that the man had spent too much time at a tool crib getting a drill out to do a job with. Another was that he had spent considerable time in the men's room. Both of those charges Mr. Katz denied.

Mr. Lasker then said "Well,—" the attitude Mr. Lasker took was: Let's let by-gones be by-gones. You are really on the basis of a two-year man. If you really want to go back there and do a job of work 10 hours a day like you are supposed to do, you can have your job back; there will be no persecution, we won't feel there is any persecution.

1239

Mr. Katz said all right, that he wanted to go back to work and felt he could do his job, but he asked one other question. From that he led into the question of soliciting in the shop, whether it was allowed to solicit for unionism in the shop. Mr. Lasker said no, under the rules and regulations of the company you are not allowed to solicit.

Well, Mr. Katz asked him to clarify that soliciting, just what it meant; could he talk union or couldn't he talk union.

1240 *Henry Joseph Mac Donald—For Respondent—Direct*

Mr. Lasker said, "Yes, you can talk union; you can talk union to the man next to you, as far as that goes, providing you don't hold up production or stop him from working. You can't solicit. You can't solicit anything. You can't solicit apples, or do anything in the shop that would be in the form of solicitation."

Mr. Katz said, "Well, by that you mean I can't solicit even on my own time?"

Mr. Lasker said, "Well, what do you call your own time, while you are in the plant?"

1241 He said, "Yes."

Mr. Lasker said, "No; you can't solicit in the plant at any time at all."

He said, "Can't I solicit during lunch hour or at smoking period?"

Mr. Lasker said, "Well, the smoking period isn't your time; it is company time and you are paid for that. At lunch time you can't solicit either."

Mr. Katz said, "Can I talk union during lunch time if somebody comes up and asks me a question about it?"

He said, "Yes, you can answer it, but you can't solicit."

1242 That was the way the conversation broke up. Mr. Katz went back seemingly happy to get back on the job.

Q. What was done with the request for release? A. Mr. Lasker said he would tear the release up and tore it up right in front of Mr. Katz.

Q. Do you remember whether or not Katz was wearing any kind of button; I mean particularly a C. I. O. button of any kind? A. I didn't see any button of any kind on Mr. Katz at that time.

Q. Or one of those steward's buttons? A. No.

Q. Was there any talk about buttons that you remember? A. I don't recall any talk about buttons at all in that conversation.

Q. Mr. Katz has testified in this case, and I would just like to read you briefly some of the things he said about this talk, Mr. MacDonald, on page 172. If you will listen I would like to ask you if you remember anything like this being said at this talk you have described. He is talking about Mr. Lasker himself, and Katz says:

"He pointed out that according to company rules you could not solicit, and I said, 'What do you mean by that?' He said, 'Well, you can't talk about the union and you can't pass around application cards.' " Do you remember anything Mr. Lasker or anyone said saying he couldn't talk about the union? A. No; I don't recall that conversation at all. 1244

Q. "And then I asked him the question, and I said, 'Let me get this straight. You say I can't talk about the union?' I said, 'Supposing I am sitting eating my lunch during the lunch hour and a friend of mine comes over to me and says, 'Hello, Bob. How is the union coming?' What am I supposed to say to him according to company rules?'

" 'You are supposed to say,' he said,"—that is Mr. Lasker—" 'I am sorry, I can't speak to you. We are on company property.' Please see me outside company property before we can discuss the conversation—discuss the union.' " 1245

Do you remember any such talk as that? A. No such talk as that at all.

Q. He is continuing, meaning Mr. Lasker:

"He then pointed out that he saw my steward's button, and then I asked him, 'Am I allowed to wear a union button?' He said, 'You can wear any kind of union button, any kind of C. I. O. button in any amount you want to.' "

Was anything like that said? A. I don't recall that.

Mr. Lumbard: You may examine him.

1246 *Henry Joseph Mac Donald—For Respondent—Cross*

Cross examination by Mr. Rose:

Q. When is your best recollection as to when this talk occurred? A. You mean the date?

Q. Yes, your best recollection. A. January 13th.

Q. How do you fix that time? A. Well, I would have to fix it the same way as Mr. Lasker fixed it. It is on his secretary's notebook.

Q. Was it on your secretary's notebook? A. No.

Q. Did you see the secretary's notebook? A. No.

1247 Q. You mean by that that you heard Mr. Lasker testify on that subject? A. That's right.

Q. And you have heard Mr. Lasker testify this afternoon as to the fixing of the date? A. Yes, sir.

Q. Is that what you mean? A. Yes, sir.

Q. You don't have any rule against talking by employees in the plant, do you? A. No, sir.

Mr. Rose: That is all.

By Mr. Rubenstein:

1248 Q. What is the procedure in discharging an employee; do you know what is the usual procedure? A foreman wants to discharge an employee. What does he do? A. A foreman wants to discharge an employee?

Q. Yes, or supervisor. A. I don't quite follow your question.

Q. Mr. Bofinger wants to discharge an employee, John Doe. What does he do? A. He makes out a release form.

Q. Then what does he do with the release slip? A. The release slip is then sent up to the factory offices to be signed and sent around to the personnel department.

Q. When you say sent up to the factory offices to be signed, does it go through all the offices? A. In most cases, yes.

Q. Will you tell us what offices it goes to? A. Yes. In Mr. Bofinger's case as section supervisor it would go

Henry Joseph Mac Donald—For Respondent—Cross

1249

to the superintendent's office and then the factory manager's office.

Q. Let's get clear. Bofinger is sectional supervisor; is that right? A. Yes, sir.

Q. If he discharges an employee he makes out a release for that employee, a request for release? A. That is correct.

Q. He gives the reasons for that request? A. That's right.

Q. And then this request is sent to his superintendent? A. That's correct.

1250

Q. What is the name of his superintendent? A. Mr. Bofinger's superintendent is Mr. Wheeler.

Q. Mr. Wheeler then approves it? A. That is correct.

Q. And if he thinks the request is justified he signs his name; is that right? A. That is correct.

Q. Then Mr. Wheeler sends it up to whom? A. Then it goes to the general superintendent.

Q. Who is the general superintendent? A. Mr. Keough.

Q. What does Mr. Keough do? A. He approves it and sends it to the factory office, the factory manager's office.

Q. It is possible that Mr. Keough sometimes does not approve a request for release which was approved by Mr. Wheeler? A. Yes. 1251

Q. It is possible? A. That's right.

Q. Mr. Keough has authority to either approve or disapprove a release? A. That's right.

Q. After Mr. Keough who sees it? A. It is either signed by myself or Mr. Lasker; in most cases by both of us.

Q. In most cases by both of you? A. Yes, sir.

Q. Why does it need the signature of both of you? A. That is the company's rules and regulations.

Q. That both the assistant factory manager and the manager sign it? A. That's right.

1252 *Henry Joseph Mac Donald—For Respondent—Cross*

Q. Who does it go first to? A. To the superintendent—first after it is made out?

Q. No, after it clears Mr. Keough's office? A. It comes to me.

Q. It comes to you first? A. Yes.

Q. Then you sign your name to it? A. That is correct.

Q. Then it goes for final approval to Mr. Lasker? A. That is correct; and if I am not available can go directly to Mr. Lasker from Mr. Keough.

1253 Q. Let's see if the procedure is clear in our minds. The sectional supervisor decides to fire an employee. He makes out a request for release; is that right? A. That is correct.

Q. Then it goes to his superintendent, who approves it? A. That is correct.

Q. After the superintendent it goes to Mr. Keough, who has to approve it? A. Yes.

Q. After Mr. Keough it goes to you and you approve it? A. That's right.

Q. Sometimes you are not there and it goes directly to Mr. — A. Lasker.

Q. Mr. Lasker, and then, even if you do approve it, it goes to Mr. Lasker? A. That's right.

1254 Q. Do you know whether on the day you were testifying about the request for the release of Mr. Bofinger went through the same procedure? A. I don't know.

Q. You don't know? A. I don't know what release you are referring to.

Q. The release that Mr. Bofinger — A. Mr. Bofinger didn't make out the release.

Q. The release that Mr. Doglione—who made the request for release of Mr. Katz? A. Mr. Doglione.

Q. That request for release, did that go through the same procedure you have just outlined? A. Yes, sir.

Mr. Lombard: I think you ought to show the witness the request.

Henry Joseph Mac Donald—For Respondent—Cross

1255

Mr. Rubenstein: Have you got it?

Mr. Lumbard: You have got it. That is it right there, Exhibit 8-D.

The Witness: It isn't, though.

Mr. Rose: It can't be, Mr. Lumbard.

Mr. Lumbard: No, it can't be because it was torn up. I am sorry. I didn't know which one you were talking about.

By Mr. Rubenstein:

Q. You think the request for the discharge of Mr. Katz—cross that; strike it out.

1256

Do you know whether that request for the discharge of Mr. Katz made out by his supervisor, to which you were referring in your testimony, went to the same procedure that you testified? A. I didn't refer to any supervisor in my testimony.

Q. What? A. I didn't refer to any supervisor in my testimony.

Q. I asked you what is the procedure if a man is discharged. Now I used the name of Bofinger instead of the name of Doglione. A. That is where you confused me.

Q. Let's now go through with Doglione. Assuming that that Doglione requests a personnel change, to fire a man. He signs it and gives the reasons for it; is that right? A. Yes.

1257

Q. To whom does that request go? A. That goes to Mr. Bruno.

Q. Who is Mr. Bruno? A. Parts plant superintendent.

Q. And Mr. Bruno approves it? A. That is correct.

Q. After Mr. Bruno who does it go to? A. Mr. Keough.

Q. And Mr. Keough approves it? A. That is correct.

Q. And after Mr. Keough it goes to you? A. That is correct.

1258

Henry Joseph Mac Donald—For Respondent—Cross

Q. And you approve it? A. That is correct.

Q. And after that it goes to Mr. Lasker? A. That is correct.

Q. Now, on the day that the request was in Mr. Lasker's possession had it gone through all the approvals? A. To the best of my knowledge it had.

Q. You approved it yourself before it came to Mr. Lasker? A. I assume I did.

Q. Don't you know? A. I am not positive, no.

1259

Q. You were called in to Mr. Lasker's office? A. Yes, sir.

Q. By whom? A. By Mr. Lasker.

Q. He telephoned you to come in? A. That is correct.

Q. And there was a discussion about a request for a release? A. No; he told me he had a release on his desk and he invited the man up to see him.

Q. Don't you know whether that release or that request for release was in your possession and cleared your hands before it came to Mr. Lasker? A. I couldn't state for sure, no. It wouldn't be absolutely necessary.

Q. Do you know whether it cleared Mr. Keough's office? A. No; I couldn't say for sure about that. I assume it had, being it got to Mr. Lasker's office; it must have been.

1260

Q. You assume but you don't know. A. No; I don't know.

Q. Who was the third person in Mr. Lasker's office?

A. There was Mr. Lasker, Mr. Bruno, Mr. Katz and myself.

Q. Mr. Bruno? A. Correct.

Q. Is it the usual procedure of your company to have three employees in a supervisory capacity to consider the request for the discharge of an employee? A. No; only in exceptional cases.

Q. Only in exceptional case; and this you considered was an exceptional case? A. Mr. Lasker considered it exceptional, in that he called us.

Henry Joseph Mac Donald—For Respondent—Redirect

1261

Q. Do you know the reason Mr. Lasker considered it exceptional? A. Yes, he felt the man was a two-year man and it was something that should be investigated. He considered him an old employee.

Q. Is that the only reason? A. It is the only one I know of.

Q. Isn't it a fact that the reason it was necessary—strike it.

The reason all of you were brought together was the fact that Mr. Katz was at that time a member of the union? A. Not to my knowledge; no.

1262

Mr. Rubenstein: That is all.

Mr. Lumbard: May I just ask one question?

Redirect examination by Mr. Lumbard:

Q. Did you attempt yourself to fix the day of this meeting with Katz from your own records? A. No.

Q. You had no records from which you could fix it? A. No.

Q. But there was only one talk that you had with Katz; that is correct? A. That is all.

Mr. Lumbard: That is all.

1263

(Witness excused.)

EDWARD ROMEO was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

Trial Examiner Hektoen: Your name, please, sir.

The Witness: Edward Romeo.

Trial Examiner Hektoen: Your address?

The Witness: Gwynne Lane, Farmington.

1264

*Edward Romeo—For Respondent—Direct**Direct examination by Mr. Whittlesey:*

Q. Mr. Romeo, are you employed by Republic Aviation? A. I am.

Q. How long have you been employed by Republic Aviation? A. For about eight years, nine years; eight or nine years; about eight years.

Q. And in what capacity are you presently employed by that company? A. At present, sectional supervisor, material preparation department.

1265

Q. Does that department have any particular number? A. Yes, 01.

Q. That is what is known as 01 shop? A. That's right.

Q. How long have you been sectional supervisor there? A. Since the first week in January.

Q. Prior to that time—well, prior to the time you became the sectional supervisor there, had you been on the night shift? A. Yes; I was assistant sectional supervisor on the night shift.

Q. And then you were transferred to the day shift? A. Right.

Q. Do you have any recollection as to about what day in January it was you were transferred to the day shift?

1266

A. I am not sure; it was somewhere around the 9th of the month.

Q. Now, in your section was there an employee by the name of Tomford? A. Yes.

Mr. Rose: Excuse me. Are you talking about the day shift now or the night shift?

Mr. Whittlesey: About the day shift now; he had been transferred over.

By Mr. Whittlesey:

Q. Mr. Tomford was in the day shift? A. Right.

Q. Do you recall ever having received a request from Mr. Tomford for a pass to Mr. Lasker's office? A. I do.

Q. How long would you say after you were transferred to the day shift did that occur? A. I would say about four or five days.

Q. When Mr. Tomford requested that pass to Mr. Lasker's office, did he request it of you? A. Yes; I signed that pass for him.

Q. In other words, you granted the request; right? A. That's right.

Q. Did you have occasion to have a talk with Mr. Tomford after that? A. Yes, sir. 1268

Q. When was that? A. I believe it was the following day.

Q. Did you summon him to your office or did he come to see you? A. He came in to see me.

Q. Do you recall—did he ask you any questions when he came to see you? A. Yes, sir.

Q. Do you recall what he asked you about? A. He asked me about soliciting in regards to the union during lunch hour.

Q. What did you tell him? A. I told him that according to company regulations that wasn't allowed, and he wanted to know why, and I said, "It is simply a rule of the company; no soliciting of any kind, whether it be merchandise or insurance or anything else." 1269

Q. Did Tomford, so far as you know, engage in any solicitation after this talk with you? A. No, sir.

Q. Now, Mr. Romeo, have you at any time seen any of the employees of the shop or noticed any of the employees of the shop wearing C. I. O. buttons? A. Yes, sir.

Q. Have you any recollection as to approximately when you first saw employees wearing such buttons? A. Well, it was when I came on days. I have seen them on several occasions but didn't pay much attention to them.

1270

Edward Romeo—For Respondent—Cross

Q. Have you any approximation of about how many employees you have seen wearing such buttons? A. Possibly seven or eight.

Q. Do you know the names of such employees? A. No, sir; never inquired.

Q. You never sought to find out? A. No, sir.

Q. Did you ever see an employee wearing a button marked "steward"? A. I did on one occasion.

Q. What occasion was that? A. That was Mr. Kahler.

1271

Q. Was that subsequent to the time you had observed employees wearing CIO buttons? A. Yes, sir.

Q. Mr. Kahler was in your section, was he? A. Yes, sir.

Q. By the way, those employees you say you had observed wearing just plain CIO buttons, were they in your shop? A. Not all of them.

Q. Some were in different shops? A. They were scattered; I have seen them as I went around the plant.

Mr. Whittlesey: No further questions.

Cross examination by Mr. Rose:

1272

Q. What is your best recollection as to when Tomford asked for the pass to go to Mr. Lasker's office? A. About four or five days after I came on days. That would make it somewhere around the middle of the month.

Mr. Rose: Will you read the answer, please?

(Record read.)

The Witness: Generally.

Mr. Rose: I don't think I have any questions. I may have one or two more. I suggest Mr. Rubenstein examine him in the meantime while I look through these papers.

By Mr. Rubenstein:

Q. You testified that a few days after you were transferred to the day shift Mr. Tomford came and asked to see Mr. Lasker? A. That's right.

Q. Did he tell you what he wanted to see Mr. Lasker about? A. No. I didn't question him. I gave him the pass.

Q. You gave him the pass and he went to see Mr. Lasker? A. That's right.

Q. Then you testified, if I am correct, a few days after that Mr. Tomford spoke to you again.

Mr. Whittlesey: No; he didn't say a few days after.

The Witness: No; I didn't say a few days after. It was either the same day or the following day.

By Mr. Rubenstein:

Q. Do you remember your conversation with Mr. Tomford on that day? A. Not word for word, but I remember what it was about.

Q. He asked whether he could solicit during lunch hour for the C. I. O. I told him it was against company rules and regulations, whether it was C. I. O. or merchandise or insurance, it wasn't allowed, but he could solicit all he wants outside of company property.

Q. Did he tell you the result—strike it.

Did he tell you what he spoke to Mr. Lasker about? A. No, sir.

Q. He didn't tell you? A. No, sir.

Q. Did he tell you he spoke to Mr. Lasker about solicitation? A. He didn't tell me he spoke to Mr. Lasker at all.

Mr. Lumbard: Your questions had to do with whether somebody spoke to Mr. Lasker?

1276

Edward Romeo—For Respondent—Cross

Mr. Rubenstein: Am I off the record or not?

Mr. Lumbard: I was trying to find out what the questions related to.

Mr. Rubenstein: In reality to conversation between Mr. Tomford and the witness.

By Mr. Rubenstein:

Q. What time of the month was that? A. Around the middle of the month.

1277

Q. Around the 14th? A. Something like that.

Q. Or the 16th? A. Possibly.

Q. When Mr. Kahler spoke to you did he say anything about steward's buttons? A. Mr. Kahler did not speak to me.

Q. Did Mr. Tomford speak to you about steward's buttons? A. No; he just asked permission to solicit during lunch hour.

Q. Mr. Kahler was in your department? A. Yes, sir.

Q. Raymond Kahler? A. Yes, sir.

Q. You made out a release request for Mr. Kahler? A. Correct.

1278

Q. On what day was it; do you remember? A. I am not sure what day.

Q. You are not sure what day? A. No, sir.

Q. Did you speak to Mr. Kahler before you made out a release for him? A. No, sir.

Q. You didn't speak to him? A. No, sir.

Q. Were you requested to make out a release for him? A. I was.

Q. By whom? A. By my superior.

Q. Who is your superior? A. Mr. Bruno.

Q. How did he request you to make out a request for a release? A. He told me that Mr. Kahler was told not to wear his steward's button and if he kept on wearing it I was to release him.

Q. When did he tell you that? A. He told me that—I don't know the exact date.

Q. Well, was it a week before you made out your request for a release? A. No; it was the same day.

Q. Now, Exhibit 8-B of the Board shows the date as the 26th of January. That was when you made out a request for the release; is that right? A. That's right.

Q. And that was the same day Mr. Bruno called you and told you to make the request out? A. Yes.

Q. You did not have any conversation with Mr. Kahler yourself? A. No.

1280

Q. Now you testified that you saw C. I. O. buttons on the day shift; is that it? A. Yes, sir.

Q. Did you ever see C. I. O. buttons on the night shift? A. I didn't notice it.

Q. Never? A. No.

Q. And when was the first time that you did see C. I. O. buttons on the day shift? A. The first day I come on days.

Q. The first day you came on? A. Yes, sir.

Q. Did you know what they were? A. Yes, sir.

Q. Do you know what a union button is? A. Yes, sir.

Q. And you know what the C. I. O. is? A. Yes, sir.

Q. Did you know at that time that there was a union in the shop? A. No.

1281

Q. When you saw the C. I. O. buttons did you know, were you interested to know, whether these members belonged to the union? A. I knew they belonged to the union but it didn't interest me.

Q. You knew they belonged to the union? A. Yes, sir.

Q. What made you know they belonged to the union?

A. Well, wearing a button is an emblem of the membership, I assume.

Q. And you don't know who wore them? A. I never inquired.

1282

Edward Romeo—For Respondent—Cross

Q. How large is your department? A. I have got about 600 men.

Q. The button that you have seen—strike that out.

Do you remember what kind of button that was? A. Yes, sir; a little round button, with a white background with "C. I. O."

Q. The words "C. I. O." A. The letters "C. I. O."

Q. Were the letters "C. I. O." on the middle of the emblem? A. Yes.

Q. Were they large letters? A. Yes; large enough to be seen about 10 feet.

Q. Was there any color on them? A. Yes, sir.

Q. Do you remember the color? A. I know there was some red in the button.

Q. Some red? A. Yes, sir.

Q. And blue? A. Yes, sir.

Q. How many colors would you say the button had? A. Three.

Q. That is, red, white and blue? A. Yes, sir.

Q. And the only letters you saw on the button were the words "C. I. O."? A. I didn't say that. I said the only letters I saw were "C. I. O.". If there were other letters they were invisible at the distance I seen them.

1284

Q. You mean the letters "C. I. O." were visible? A. That's right.

Q. You say you saw other letters which were not visible? A. That's right.

Q. Now, where were the letters "C. I. O." with reference to the button? A. In the center of the button.

Q. And where was the rest of it? A. Around the button somewhere.

Q. Were there any pictures on the button? A. I believe there were.

Q. What pictures? A. I am not sure. I think there was a flag on it.

Edward Romeo—For Respondent—Cross

1285

Q. You think there was a flag on it? A. I never paid much attention to them. I just know I saw letters standing out.

Q. Do you say the letters were across the button in the center? A. As far as I can remember; yes, sir.

Q. I show you this button. Is this the button that you have seen? A. No, sir.

Mr. Rose: Number, please.

Mr. Rubenstein: This is Union's Exhibit 2 for Identification.

1286

By Mr. Rubenstein:

Q. Is this the button that you have seen? A. No, sir.

Q. I show you this button, Union's Exhibit No. 1; is that the one you have seen? A. No, sir.

Q. None of these? A. No, sir.

Q. And the only employees you saw wearing a steward's button was Kahler; is that right? A. That's right.

Mr. Rubenstein: That is all.

Mr. Rose: I still have one question I would like to ask.

1287

By Mr. Rose:

Q. You referred to Mr. Tomford requesting you for a pass to Mr. Lasker's office? A. That's right.

Q. What is this pass you referred to? A. It is just a pass, a pass form that we fill out for the employees to leave the department, either to the personnel department or to the hospital or to any part of the factory that they wish to go.

Q. The employee takes the pass with him? A. That's right.

1288

James Franklin Craig—For Respondent—Direct

Q. And he delivers it to the place where he is going; is that right? A. That's right.

Mr. Rosè: That is all.

Mr. Whittlesey: I have no further questions.

Trial Examiner Hektoen: You may stand down.

(Witness excused.)

Trial Examiner Hektoen: For my information, what is the significance of this testimony concerning the pass; just to show the system?

1289

Mr. Whittlesey: I don't know. I was simply laying a foundation for the following questions.

Trial Examiner Hektoen: Regarding solicitation?

Mr. Whittlesey: That is correct.

Trial Examiner Hektoen: Does Lasker have something to do with that?

Mr. Whittlesey: No; I wanted to recall the incident to the gentleman's mind.

Trial Examiner Hektoen: I see. Very good.

1290

JAMES FRANKLIN CRAIG was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

Trial Examiner Hektoen: Will you give us your full name, please?

The Witness: James Franklin Craig.

Trial Examiner Hektoen: What is your address?

The Witness: Pleasant View Court, Copiague, Long Island.

Direct examination by Mr. Whittlesey:

Q. Mr. Craig, by whom are you employed? A. Republic Aviation Corporation.

James Franklin Craig—For Respondent—Direct

1291

Q. How long have you been employed by Republic Aviation Corporation? A. Six and one-half years.

Q. At the present time in what capacity are you employed by Republic? A. As a supervisor on the night shift.

Q. Night shift in what shop? A. In 01 shop.

Q. How long have you been a supervisor on the night shift in 01 shop? A. Since November 3, 1942.

Q. Prior to that what position did you occupy? A. The same position on the day shift.

Q. For how long? A. Since June 1942.

Q. Now, during the time that you were supervisor on the night shift did you have working under you an employee by the name of Arthur Clements? A. I did.

1292

Q. Do you know how long he was working under you in 01 shop? A. Approximately one month.

Q. Do you know what period? A. From January 9th until February 4th or 5th.

Q. February 4th or 5th? A. That is right.

Q. Now on February 4th did you have any discussion with Mr. Clements? A. I did.

Q. Did he come to you or did you go to him, do you recall? A. He came to me.

Q. What did he say to you as you recall it? A. He demanded his release.

1293

Q. Did he give any reason for demanding his release? A. Yes. He stated he had been promised a rate increase which he had not received on that particular day, being a pay day, and he wanted his release immediately.

Q. Is pay day any particular day during the week in the plant there? A. It is Thursday.

Q. You say that day he came to see you was pay day? A. Yes, sir.

Q. Is that right? A. That is right.

1294

James Franklin Craig—For Respondent—Direct

Q. He said that he had been promised a rate increase?

A. That is right.

Q. Did he say who had promised him the rate increase?

A. No.

Q. Had he ever before that time asked for a rate increase from you? A. He had approached me two or three times during that month.

Q. In other words, between the time he came in Ol shop and this night? A. Yes, sir.

Q. Is that right? A. That is right.

1295

Q. You say he approached you? A. Yes.

Q. Did he request an increase? A. He requested an increase.

Q. What had you told him at those times? A. I told him when I felt he was entitled to a rate increase I would see he would get one.

Q. Up to February 4th you did not feel he was entitled to a rate increase; is that right? A. That is right.

Q. Now, besides stating, as you have testified, that he had been promised a rate increase and had not received it, did he have any other complaint to make at this time he talked with you? A. He complained at that time about

1296

the incessant soliciting in the shop which he claimed was exorbitant and he was going to see to it that it was stopped.

Q. Prior to this time had he ever mentioned any soliciting to you? A. No, he had not.

Q. He had talked with you several times before that? A. That is right.

Q. But always in connection with a demand for a rate increase? A. That is right.

Q. Do you recall whether he mentioned any particular form of soliciting at this time he talked with you? A. His remark to me was that he had been approached on various occasions and on this particular time he had been approached on the purchase of a dance ticket.

James Franklin Craig—For Respondent—Direct

1297

Q. Yes? A. Or rather, he had been approached concerning a donation for a dance ticket.

Q. And did you tell him that he should contribute to this dance or buy this dance ticket that he was talking about? A. I did not.

Q. Did you say anything to him about soliciting that you can recall? A. I told him at that time that I was definitely instructed to prohibit all soliciting in the shop and I would make every attempt to stop it, and no soliciting was going on to my knowledge.

Q. Did you ask him any further details about this dance ticket that he had mentioned to you? A. I did. 1298

Q. Did he give you any details? A. He mentioned the person's name who had approached him concerning about it.

Q. Did you after that do anything to investigate about what he told you? A. I did; I went out immediately while he was still in my office and approached that foreman.

Q. What did you do? A. I instructed the foreman to look into the matter and have it stopped immediately if it existed, and reminded him of the existing regulations prohibiting soliciting of any nature.

Q. Do you recall whether Mr. Clements mentioned at this time any other form of soliciting that concerned him? A. He stated at that time, his exact words were that he was sick and tired of being solicited; that he had contributed twenty dollars or more to various persons at various times and he was going to see that it was stopped. 1299

Q. Did you ask him why he had not spoken to you before? A. I did.

Q. Did he mention any other specific types of soliciting other than this dance ticket that you can recall? A. He mentioned the fact that someone had approached him regarding the upkeep of a small fund for the purpose of maintaining first aid supplies in the shop.

1300

James Franklin Craig--For Respondent--Direct

Q. Did you ask him for further details in that connection? A. I did.

Q. You got the details, did you? A. I got the details.

Q. Did you investigate further into that charge? A. I investigated further into the charge.

Q. Did you take any action? A. I took action; I ordered it stopped immediately.

Q. Was it stopped, do you know? A. It was stopped.

1301

Q. Had you prior to this occasion of your talk with Mr. Clements ever had any solicitations among the men under your supervision brought to your attention? A. Not to my knowledge; there was no solicitation to my knowledge.

Q. You never had to deal with any before; is that right? A. That is right.

Q. Did you ever have occasion to stop any other solicitation at any time? A. Merely in a routine way, I consistently informed my foreman and lead men that solicitation was not to be permitted in the shop; it was against the company regulations and warned them repeatedly.

Q. Now you say that Mr. Clements asked you for a release that night? A. Yes, sir.

Q. Is that right? A. That is right.

1302

Q. Did you give him the release? A. I did.

Q. How would you characterize this occasion you have told us about? Was it a quiet and peaceful proceeding or otherwise?

Mr. Rose: I object.

Trial Examiner Hektoen: What is the purpose, Mr. Whittlesey?

Mr. Whittlesey: I will withdraw that question.

By Mr. Whittlesey:

Q. Did you at any time have any information or idea that Mr. Clements was a union member? A. No, sir.

Mr. Whittlesey: That is all with the witness.

James Franklin Craig—For Respondent—Cross

1303

Cross examination by Mr. Rose:

Q. You referred to some investigation you made in connection with a first aid fund solicitation? A. That is right.

Q. What did you do? A. I instructed my foremen to look into it and if such was the case, to see that it was stopped immediately.

Q. What was your conversation with your foremen? A. I spoke to the foremen and told them that Mr. Clements claimed that he had been approached and asked to contribute a small amount of money to the upkeep of this fund and if such a condition existed, that he should see it was stopped at once.

1304

Q. During the period of your employment as a supervisor have you ever contributed to any fund and made contributions in the plant? A. I have not.

Q. Are you a member of the Republic Service Organization? A. Yes, sir.

Q. When did you become a member? A. When did I become a member?

Q. Yes. A. I can't recall exactly.

Q. About how long ago was it? A. Approximately a year and a half.

Q. What was your job at that time? A. I was a supervisor.

1305

Q. On the day shift? A. On the day shift.

Q. How did you become a member? Did you have to pay a fee or something or make a contribution? A. Yes, sir.

Q. How much did you pay? A. I don't recall exactly.

Q. Can you give us any approximation? A. Approximately one dollar.

Q. To whom did you give it? A. I can't recall the person's name or his position.

Q. Was that an employee of the company? A. It was not an employee in the manufacturing.

1306

James Franklin Craig—For Respondent—Cross

Q. You mean by that it was somebody who worked in the office? A. I believe it was.

Q. Where were you when you made that contribution?

A. You mean in what part of the plant?

Q. Yes. A. I don't recall that either.

Q. Was it in the plant? A. It was on company property.

Q. It was? A. Yes.

Q. Was it in the plant? A. I believe so.

Q. In the manufacturing portion of the plant? A. I believe so.

1307

Q. At that time did you have an office? A. No, I did not.

Q. Did you have a desk? A. No.

Q. Did you have any space or desk at all? A. I had no desk; I had no allotted space in which my activities were confined.

Q. Have you ever seen any dance tickets in the plant?

A. Have I ever received any dance tickets in the plant?

Q. No, have you ever seen any dance tickets in the plant? A. Have I ever seen any dance tickets in the plant?

Q. Yes. A. No, I have not.

Q. Have you ever seen any notices on any of the bulletin boards concerning the sale of dance tickets? A. No, I have not.

1308

Q. Never? A. Not concerning the sale of dance tickets.

Q. Concerning the purchase of dance tickets? A. I have seen advertisement on the bulletin board; rather it was in print, advertising tickets and so forth.

Q. Do you recall whether any of those advertisements mentioned that tickets could be purchased? A. I don't recall that.

Q. Do you recall whether any of those tickets mentioned where tickets could be purchased? A. No.

Q. Do you have a shop clerk? A. No, sir.

Q. Do you have an office now? A. I do.

Q. But you do not have a shop clerk? A. That is right.

James Franklin Craig—For Respondent—Cross

1309

Q. How long have you had an office? A. Since I have taken the position as night supervisor.

Q. As night supervisor, you mean you are a sectional supervisor? A. No.

Q. You are immediately below sectional supervisor? A. Yes, sir.

Q. Now, as I understand, you wrote out a release for Mr. Clements? A. I requested his sectional supervisor's clerk to write out a release.

Q. When did you make that request? A. Within 15 minutes after he approached me on the subject.

1310

Q. And who was the clerk you asked for the release? A. I am sorry, I cannot give the person's name.

Q. Who was sectional supervisor? A. Mr. Romeo.

Q. How did you make the request? A. I stated that Mr. Clements requested his release and I felt that under the circumstances he was entitled to one; so I asked the clerk to make it out immediately.

Q. What I meant was, did you request it in writing or orally? A. Orally.

Q. Over the telephone? A. No, I walked into the office and requested the release.

Q. Where did Mr. Clements remain? A. In my office.

1311

Q. You left him sitting there? A. Yes.

Q. Is that right? A. That is right, yes.

Q. How long did your conversation with Mr. Clements last? A. The actual conversation took about 20 minutes. He remained in my office approximately one hour.

Q. He remained in your office one hour? A. Yes, sir.

Q. And the conversation lasted only 20 minutes? A. That is right.

Q. Was that the fore part of one hour or the latter part of the one hour? A. Both.

Q. Both? A. That is right.

Q. How many foremen do you have under your super-

1312

James Franklin Craig—For Respondent—Cross

vision or did you have in the month of February while you were on the night shift? A. Five. I had five foremen at that time.

Q. How many lead men? A. Approximately 11.

Q. Do you know an employee referred to as "Red"?

A. I do.

Q. What was his job in February? A. Lead man.

Q. He is a lead man? A. Yes.

Q. What is his correct name? A. Edward McAulif.

Q. Was he Mr. Clements' lead man? A. He was Mr.

1313 Clements' lead man.

Q. Do you know an employee named Tracy? A. I do.

Q. What is his job? A. He is bench mechanic.

Q. Did he have that job in February? A. That is right.

Q. What is Tracy's full name? A. DeWitt Tracy.

Q. Where is Mr. Romeo's office with respect to your office? A. It was adjoining.

Q. How was your office separated by his? A. By a glass partition.

Q. You can see through it? A. That is right.

Q. Did you look in before you went into Mr. Romeo's office? A. The office is used for hanging hats and coats and my vision was obstructed by an overcoat.

1314

Q. Whom did you see when you went into Mr. Romeo's office? A. I don't recall.

Q. You have no recollection? A. The clerk was in the office. Whether Mr. Romeo was there, I don't recall.

Q. Did you ask for Mr. Romeo? A. No, I did not, at that moment.

Q. Did you ask for Mr. Romeo later? A. I did.

Q. About what time was this? A. It was before nine o'clock in the evening.

Q. Before nine o'clock in the evening? A. That is right.

Q. About how long before? A. Well, I can't recall.

Q. Would you say 10 minutes before? A. Well, it was, we will say, between 9 and 8 o'clock.

James Franklin Craig—For Respondent—Cross

1315

Q. Between 8 and 9? A. That is right.

Q. Do you know the name of the shop clerk that was in Mr. Romeo's office? A. Only by first name.

Q. What is the first name? A. Katherine.

Q. A girl? A. A girl.

Q. When you asked for Mr. Romeo what did she say?

A. She stated she did not know where he was at the moment.

Q. Did you see Mr. Romeo later that evening? A. I did.

Q. About what time? A. Within the hour.

Q. You mean sometime between 8 and 9 o'clock? A. 1316
That is right.

Q. Where did you see—

Mr. Lumbard: You mean between 9 and 10 o'clock, don't you?

Mr. Rose: I meant between 8 and 9 o'clock.

Did you mean between 9 and 10 o'clock?

The Witness: I meant between 8 and 9.

By Mr. Rose:

Q. Was it after you had obtained the release? A. No. I cannot obtain a release without Mr. Romeo's signature.

Q. Did Mr. Romeo approve the release that day? A. 1317
He did.

Q. Does that release have to go to anyone else besides Mr. Romeo? A. It goes through the regular personnel routine.

Q. What do you mean by that? A. I believe the personnel keeps a record of every employee and they have to strike his name off.

Q. Who signed the release? A. I cannot recall.

Q. And did Mr. Romeo sign the release? A. I believe he did.

Q. To whom did it go from Mr. Romeo? A. I believe it goes to his immediate superior.

1318

James Franklin Craig—For Respondent—Cross

Q. Who would that be? A. Fred Kipp.

Q. What is his job? A. He is parts plant superintendent.

Q. Where does it go from that gentleman? A. I am not quite sure of the procedure concerning releases; I believe it goes to his superior.

Q. Well, did you see the release that night after it passed through the various people who have to get it? A. No.

1319

Q. Did I understand you to say before that you gave Mr. Clements his release that evening? A. Only as a matter of speaking.

Q. You did not actually give him the release? A. No.

Q. Do you know when he did get a release? A. He got the release within the following two hours.

Q. What was Mr. Romeo's job on February 4th? A. Sectional supervisor.

Q. On what shift? A. The night shift.

Q. You are sure of that, Mr. Craig? A. I am sure of that.

Q. You are positive of that? A. Yes.

1320

Q. You are sure you saw Mr. Romeo that night? A. Yes, sir.

Q. As a matter of fact, Mr. Craig, wasn't Mr. Romeo transferred to the day shift in the early part of January, 1943? A. No, sir.

Q. You are sure of that? A. Mr. Romeo was transferred to the day shift; I can't recall the exact date.

Q. Is it not a fact that in the month of February, 1943 Mr. Romeo was on the day shift? A. I cannot recall.

Q. You have no recollection whether or not in February, 1943 Mr. Romeo was on the day shift or night shift? A. Mr. Romeo was transferred to the day shift some weeks past but I can't recall, as far as to say, exactly the week or the date.

Q. As a matter of fact you did not see Mr. Romeo at all on the night of February 4th? A. To the best of my recollection I did see Mr. Romeo.

Q. As a matter of fact he was not your night supervisor on that night, was he? A. I am recalling to the best of my recollection.

Q. Will you tell us the entire conversation you had with Mr. Clements that night as far as you can recall? A. Mr. Clements approached me shortly after having received his pay envelope that night; he came into my office and demanded his release.

I asked him why he wished his release. He said he had been promised a rate increase and had not received it. He went on to say that he could not support his family with his present rate of pay which he was receiving.

He then continued to say that he was also tired of being continuously approached and solicited for funds for various purposes, and he was very indignant because of the fact that he was being solicited, and he remarked that he was going to put a stop to it if he had to raise the roof of the place.

Q. Did he mention whether or not he had been solicited that night? A. He mentioned that particular incident.

Q. What particular incident? A. He had been solicited by one of the boys in the shop. He did not state specifically for what purpose.

Q. Did he mention specifically who had solicited him? A. No, he did not.

Q. Did he mention any nickname? A. No, he did not.

Q. Did you say anything about Mr. Clements requesting a raise? A. At that time I did not say anything.

Q. You said nothing? A. No.

Q. Did you suggest he discuss it with anyone? A. He insisted—

Q. Just answer the question. A. Pardon me. No.

Q. Did you ask him any questions about the solicitation he mentioned? A. I asked him what he referred to, as

1324

James Franklin Craig—For Respondent—Cross

much as soliciting was concerned. He stated that he had been solicited for some purpose or other.

Q. Did you ask him who solicited him? A. No.

Q. Did you ask him for what purpose? A. No.

Q. Did you ask him when he had been solicited? A. Yes.

Q. What did he say? A. He said that evening.

Q. You did not ask him who solicited him? A. No.

Q. Weren't you interested in finding out who was violating what you refer to as the rule of the company? A. I was interested only in seeing that the rule was not violated.

1325. Q. You did not care who violated it? A. (No answer.)

Q. It did not make any difference to you? You were not interested in going to the particular man who violated it and reminding him that was the rule of the company? A. I went to his foreman.

Q. Who was that? A. At that time it was Stanley Stravinous.

Q. Whose foreman was he? A. He was an acting foreman for me at the time.

Q. Was there any special reason why you went to an acting foreman? A. Because I had repeatedly warned him that soliciting is prohibited in the shop.

1326. Q. Had he been soliciting? A. He had not to my knowledge.

Q. Was there any reason why you went to this particular foreman in connection with this incident? A. In the line of organization he was the man to go to.

Q. Did you approach any other foreman? A. I approached all my foremen.

Q. You went to all your foremen? A. Yes, sir.

Q. Did you ask any of your foremen who had been soliciting? A. I did not.

Q. Was this man Stravinous Red's foreman? A. He was acting.

Q. He was Red's acting foreman? A. That is right.

Q. As a matter of fact is that the reason why you went to Stravinous to talk to him about Red soliciting? A. No.

James Franklin Craig—For Respondent—Cross

1327

Q. Was Stravinous Tracy's foreman? A. He was.

Q. Have you ever contributed to any fund for the benefit of any employee in the plant? A. No.

Q. I direct your attention to Board's Exhibit 11 and ask you whether you have ever seen a notice like that before. A. I have not seen this exhibit or that notice before.

Q. I asked you whether you have seen a notice similar to that before, similar in the sense that it refers to dances and sporting events. A. I have.

Q. Where have you seen them? A. On bulletin boards.

Q. Did you ever purchase any tickets for a sporting event? A. No. 1328

Q. You never went to a sporting event? A. I did.

Q. Did you buy tickets? A. I did.

Q. But you did not go; is that right? A. Pardon?

Q. Did I understand you did not go, that you bought the tickets but you did not go? A. I bought the tickets at the door.

Mr. Lumbard: At the door where the event was to be held?

The Witness: At the door where the event was to be held, yes.

By Mr. Rose:

1329

Q. Did you ever purchase any tickets for a social event of the plant on company property? A. No.

Q. Now who wrote out the release for Mr. Clements?

A. The clerk in Mr. Romeo's office.

Q. The girl Katherine? A. That is right.

Q. How did she do it? A. She typed it.

Q. Did you tell her what to put on it? A. I did.

Q. What did you tell her to put on it? A. I told her to state that Mr. Clements was released by his own request.

Q. Was what she made out entitled "A personnel change request" or a "personnel change order"? A. I don't recall.

1330

James Franklin Craig—For Respondent—Redirect

Q. You know what I am referring to by those expressions? A. I believe so.

Q. So that you will know I direct your attention to Board's Exhibit 8-A and Board's Exhibit 7-A. You will note that one is entitled a "personnel change request", and one is entitled "personnel change order."

Was it one of those types of documents that this girl wrote out? A. I have never seen this document, similar to these.

1331 Trial Examiner Hektoen: You did not see her write it out anyhow, did you?

The Witness: No, sir.

Trial Examiner Hektoen: All right.

By Mr. Rose:

Q. Do you remember seeing a personnel change request? A. I have.

Q. Did you see the one she wrote out that night? A. No, sir.

Mr. Rose: No further questions.

Mr. Whittlesey: I have a couple of questions.

1332 Do you know whether Mr. Rubenstein has any questions?

Mr. Rose: I don't know. I will see.

Trial Examiner Hektoen: Just a minute, Mr. Rose.

Mr. Rubenstein only heard about five minutes of this examination; I don't think he would be interested.

Mr. Rose: That is the reason I was going to ask him:

Redirect examination by Mr. Whittlesey:

Q. You say you told some foreman about this method of solicitation of these dance tickets; is that right? A. Yes, sir.

Q. I lost his name. Will you give it to me again? A. I spoke to all of my foremen at that time and at various other times.

Q. This particular night? A. Yes, sir.

Q. You spoke to all of them that night? A. Yes, sir.

Q. Before you talked to them had you checked up to find out whether or not what Mr. Clements told you was true? A. No.

Q. When did you tell them? A. I told them after Mr. Clements came in my office and informed me that soliciting was going on, I went to all of my foremen and demanded that if any soliciting was going on in the shop, that it should be stopped immediately.

1334

Q. Now did Mr. Clements mention to you just how many specific types of soliciting there was on this afternoon? A. Yes, he did.

Q. How many did he tell you of? A. Two.

Q. Two? A. Yes, sir.

Q. Did you ask him if there were any more? A. No.

Q. He specified only two? A. That is right.

Q. Did you discuss with him the question of a pay increase that evening that you had this talk? A. Pardon me?

Q. Did you discuss with him a pay increase? A. No, sir.

Q. You said this talk lasted about 20 minutes? A. That is right.

1335

Q. You did not discuss the pay increase; is that right? A. No, sir.

Q. You only discussed the two instances of solicitation; is that right? A. That is right.

Q. What took up the rest of the 20 minutes? A. Mr. Clements.

Q. What did he talk about? A. He was talking about various incidents that had occurred regarding solicitation at previous times. He spent most of his time denouncing the fact that he could not support a large family on the amount of pay he was getting.

1336

William L. Wilson—For Respondent—Direct

Q. He was just saying the same thing over and over again? A. That is right.

Mr. Whittlesey: No further questions.

Trial Examiner Hektoen: Have you any further questions, Mr. Rose?

Mr. Rose: Nothing further.

Trial Examiner Hektoen: Thank you.

(Witness excused.)

1337

Mr. Whittlesey: Mr. Wilson, please.

WILLIAM L. WILSON was called as a witness by and on behalf of the Respondent and, having been previously duly sworn, was examined and testified further as follows:

Trial Examiner Hektoen: You are the same Mr. Wilson who previously testified here?

The Witness: I am.

Trial Examiner Hektoen: You were sworn at that time?

The Witness: I was.

1338

Trial Examiner Hektoen: I would suggest that we wait a minute and see if Mr. Rubenstein wants to be here.

(Recess taken.)

Trial Examiner Hektoen: We will proceed.

Direct examination by Mr. Whittlesey:

Q. Mr. Wilson, were you present here when Mr. Clements testified? A. I was.

Q. Do you recall him having testified with respect to the existence at some time or another of the so-called Benevolent Fund in the wing shop? A. I do.

Q. Do you know whether that Fund is still operating?

A. It is not.

Q. Was the Fund stopped? A. Yes, sir.

Q. Do you know when that Fund was stopped? A. Several months ago.

Q. Was that after it had been brought to someone's attention? A. Yes, sir.

Q. Who was it stopped by? A. The sectional supervisor.

Q. Mr. Wilson, can you tell us exactly what RSO is? First of all those initials stand for what? A. The initials stand for Republic Service Organization.

Q. Will you tell us when that came into existence first? A. It came into existence in the summer of 1942.

Q. Will you tell us the circumstances that led into its coming into existence? A. Yes. In the spring of last year there were a large number of soldiers moving into the Farmingdale area and in the section of Republic flying field. I understand their purpose was to give the plant protection, were put there for protection.

When the soldiers first moved in the arrangement for their living was very rudimentary. They lived in tents. It must have been quite early in the spring.

There was no sewage and no electricity at first in the place. The place where they were housed was what you might call a mud hole.

Q. Were there any recreational facilities? A. They were some distance from the community and if they would go into town, Farmingdale, was the nearest community, or they could go to Hicksville, but they found little or nothing to do. The town was not set up to absorb them.

That situation naturally was observed by employees in the plant and a number of employees talked about it, that they were sympathetic with these soldiers, because we seemed to be doing so much better in our phase of the war effort than they were.

1342

William L. Wilson—For Respondent—Direct

A number of employees came to us with proposals that by one means or another we create a fund or raise money to assist these soldiers.

Q. You mean a sort of small USO? A. Yes. We had a USO campaign in the plant, but there was no USO in the Farmingdale neighborhood.

Q. They asked us to raise this money from payroll deduction, a deduction of I believe one dollar a month. There were a lot of different formulas proposed for raising the money.

1343

Q. Did the Victory Council discuss or consider this matter at all? A. Yes. Finally, after it had been discussed with a number of people in management, it was arranged to speak to the Victory Council, which is a group of employees and management representatives, to increase production problems of the plant and related matters of that sort, and asked the Victory Council if they would not get behind this interest of the employees to do something for the soldiers.

Q. Did the question of soliciting come up before the Victory Council? A. Yes, it did. The Victory Council itself in its meeting appointed a committee to go into it.

1344

We were very much concerned about how we could do this thing which everybody wanted to do, and yet not have a violation of the solicitation rule.

Q. When you say "we", who are you referring to? A. Well, management, plus the Victory Council.

Q. I see. A. That delayed the matter for a long while, the means to do this.

Q. Was a decision on how to handle the matter finally reached? A. Yes, it was.

Q. By the Victory Council? A. Yes, a committee of the Victory Council.

Q. How was it decided? A. It was decided that we would announce to all employees, since there seemed so much interest and desire to help these fellows, that if any-

William L. Wilson—For Respondent—Direct

1345

one wanted to donate one dollar or more—I don't remember whether it was a minimum of one dollar or not—but at least, the least amount mentioned was one dollar, that if anyone wanted to donate money to this fund it would be for a good use under the Victory Council committee that had been set up, and began to handle it.

Q. Were any arrangements worked out how this money might be donated? A. Only to the extent that we announced by a poster and in the newspapers that the Victory Council members had accepted the job.

Q. Were the members of the Victory Council instructed to go out and get the contributions? A. No. They had been told throughout this discussion that we could not have solicitation.

1346

Q. Will you describe exactly in what manner the money was supposed to come into this fund, the mechanics of it?

A. Well, at the time the intent was that anyone who wanted to give one dollar a week to the Victory Council members, one dollar toward the RSO, he would accept it.

Q. Was any publicity given to it? A. Yes, largely by posters.

Q. The publicity advised persons in what manner they might make contributions to this fund? A. That is right.

Q. That was by going to a member of the Council, the Victory Council, in a section of the shop? A. That is right, and other members of the Victory Council, and a great many people came up to the personnel office and left their dollars.

1347

Trial Examiner Hektoen: What is the Victory Council?

Mr. Whittlesey: I don't think there is very much in the record on it. I will be glad to ask the witness.

Trial Examiner Hektoen: What is it?

The Witness: The Victory Council is a group of employees, representatives from each shop, and

1348

William L. Wilson—For Respondent—Direct

some members of management, such as Mr. Lasker and others who were employees, men and women who won prizes.

Trial Examiner Hektoen: I see.

The Witness: , Largely the War Production Drive committee.

By Mr. Whittlesey:

Q. Now, Mr. Wilson, you heard Mr. Katz testify here at the hearing, did you not? A. I did.

1349

Q. Do you recall having heard Mr. Katz testify with respect to some drive conducted by himself and others I believe, to get people to volunteer and to contribute blood to the Red Cross? A. That is right.

Q. Did you have any contact with those efforts? A. Yes, sir.

Q. Was that effort to get contributions brought to your attention? A. Yes, sir.

Q. Do you recall about when? A. June, 1942.

Q. When it was brought to your attention did you take any action? A. Yes, sir.

1350

Q. What action did you take? A. Well, I had indication of Mr. Katz's direct connection with it, there were several employees involved, and following a story in the newspaper we became interested; I told Mr. Hargreave, our personal manager, that having read about this thing in the paper I felt it was something we would have to discourage because it appears to me to be just the type of thing that we did not want. It would embarrass employees to give blood, that in spite of the fact that it was a worthy cause, I felt personally the idea of giving blood to the Red Cross, unquestionably employees might be fearful about it and might not want to, yet they would say yes if somebody asked them directly for it.

I also felt it was something that was done by the communities around there and something we did not want involved in the plant.

So I asked Mr. Hargreave to let the boys down easy and tell them that it could not be done at this time.

Q. Was that in your opinion contrary to the rule? A. Yes, sir.

Q. You so advised Mr. Hargreave? A. Yes, sir.

Q. Was the solicitation stopped? A. Yes. We printed, I think there was an article in the paper two or three weeks, saying it had been postponed indefinitely, and in line with our feeling of handling the matter it was just to discourage it and let it die out.

Q. Do you recall Mr. Katz testified with respect to somebody having approached him and having requested him to buy tickets in advance to some boxing match? A. Yes.

Q. Was it ever brought to your attention in January that efforts were being made to solicit employees for tickets to a boxing match to be conducted? A. Yes.

Q. Did you take any action with respect to that after it was brought to your attention? A. Yes.

Q. What did you do? A. Well, I learned, I am not sure from who, probably some supervisor told me that members of the boxing team were selling tickets in the plant for this forthcoming show.

It was a show which was arranged at the very last minute as I recall, and there was very little preparation for it.

Q. After you learned that what did you do? A. I told Mr. Reisman, the activities supervisor, that the boys were off the beam again, that he knew they should not be selling tickets, and he should call attention to it and perhaps get in touch with the sponsors anyway and get the tickets back from them, and if there were any tickets in the supervisors' offices, to call them in too, and the tickets would be sold only from the personnel office.

1354

William L. Wilson—For Respondent—Direct

Q. Were tickets placed on sale in the personnel office?

A. I believe so.

Q. Was the fact that the boxing match was to be held thereafter brought to the attention of the employees in any other way? A. Yes. Since the tickets were put through the personnel office, I believe we announced that over the loudspeaker system, that the only place they could get the tickets would be the personnel office.

Q. Do you recall Mr. Katz having testified to his being requested to buy firemen's voluntary ball tickets in January, 1943? A. I do.

1355

Q. Were the efforts to sell these tickets directly to that ball brought to your attention at any time? A. Yes.

Q. In January? A. Yes, sir.

Q. After it was brought to your attention what did you do? A. I tried to get in touch with Mr. Albert, the chief of the Volunteer Firemen's group.

I might say that is a number of employees who handle fire equipment in the plant, in the case of fire drills and so on, although there are some paid firemen. These are men that happened to be working near the fire apparatus. I tried to get in touch with Mr. Albert and he was not in at that moment. I was leaving the plant, and so I wrote him a note instructing him to stop the sale of those tickets.

1356

Q. Is this a copy of the memorandum you refer to? A. This is my carbon in the file.

Mr. Whittlesey: I would like to offer that in evidence as Respondent's Exhibit 4, I guess it is: Do you want to see this?

(Document handed to Mr. Rose.)

Mr. Rose: Don't you have the original?

Mr. Whittlesey: I will ask the questions.

By Mr. Whittlesey:

Q. This is a copy; is that right? A. This is a copy.

William L. Wilson—For Respondent—Direct

1357

Q. Is that your file copy of the memorandum? A. Yes.

Mr. Whittlesey: I haven't got an original. Do you object on that ground.

Mr. Rose: No, I will not object on that ground.

Mr. Rubenstein: I would like to object to the admission of this document into evidence on the ground it is self-serving and not binding on the union.

Trial Examiner Hektoen: I think it may be admitted. That will be Respondent's Exhibit No. 4.

1358

(Thereupon the document above referred to was marked as Respondent's Exhibit 4 and was received in evidence.)

By Mr. Whittlesey:

Q. Do you recall Mr. Katz having testified with respect to some person selling small tools on the company's property? A. Yes, I did.

Q. Do you know whether or not any individual did sell same tools on company property? A. I do.

Q. Can you tell us a little bit more about the manner in which these tools were sold? A. Yes, I can.

1359

Q. Take your time. A. That is all right. I was out of breath; I was coughing.

In all aircraft factories it is a tradition in the industry that mechanics purchase their own hand tools, all their own hand tools.

Trial Examiner Hektoen: Just very briefly, what do the hand tools consist of?

The Witness: Well, I would say wrench sets, snips, screw drivers, punches, hammers and perhaps some drill points.

1360

*William L. Wilson—For Respondent—Direct**By Mr. Whittlesey:*

Q. You say it is customary for the workers in an aircraft plant to supply and buy their own tools of that sort, their own hand tools? A. Yes, sir.

Q. Were tools sold by this man, tools of that nature? A. Yes.

Q. I believe, Mr. Wilson, that Mr. Katz testified that a man spread the tools out on a bench or table in size about four or five feet long outside the plant.

1361

Is that your recollection as to the manner in which those tools were sold?

Mr. Rose: I object.

Trial Examiner Hektoen: In the plant.

By Mr. Whittlesey:

Q. In the plant. Excuse me. A. Yes.

Q. Do you know whether the man walked around and asked the people to buy tools? A. He was not permitted to do that. He was deaf and also mute.

1362

Q. Were the tools that that man displayed for sale tools which could be bought at the company's tool cribs? A. They were not.

Q. The company does have tools for sale in tool cribs? A. Yes, sir.

Q. Does it not? A. Yes, sir.

Q. In what respect did those tools, if any, differ from the tools which the man displayed? A. Well, the company, in the first place, makes tools available at its tool cribs because in these times it is very difficult for individuals to purchase tools. Frequently they can only be purchased on priority. Supplies are very hard to get and the individual employee would have difficulty.

William L. Wilson—For Respondent—Direct

1363

Therefore for some time the company has had these tools available at tool cribs, but the company also felt it did not want to run a cash and carry business and we did not have tool crib accounts, and so the tools were sold on payroll deduction; that is, if a man wanted to purchase tools he signs an authorization and the cost of his tools is deducted from future pay.

The company also did not want to be involved in this payroll deduction, with a few pennies, 25 cents or 50 cents; so it has a policy or a rule that limits the purchases in the tool cribs by payroll deduction to some amount, I think perhaps one dollar or one dollar and a half is the minimum, but I am not sure.

1364

Q. I see. A. To answer your question, the tools which this man sells as I understand are less expensive, smaller tools, of slighter importance, that cost less than the company's minimum.

Q. Mr. Wilson, I wish you would tell us what the present method of the company is with respect to selling or making available, rather, group insurance to the employees. A. The company's group insurance is a very broad policy. It includes hospitalization, hospitalization for dependents, disability payments in case of illness or accident—

1365

Mr. Rubenstein: I object to this as not responsive.

The question was the present method of selling group insurance.

By Mr. Whittlesey:

Q. The present method of making available group insurance.

Trial Examiner Hektoen: I think we want to find out how it is sold and also find out a little bit about what it is.

Go ahead, Mr. Wilson.

1366

William L. Wilson—For Respondent—Direct

The Witness: General protection, including payments on death. The company pays 25 per cent., practically 25 per cent. of each individual's premiums, and the employee pays the rest.

1367

An applicant for employment who is being processed through the employment office prior to receiving his starting notice, is given a full explanation of what the group insurance is; he is given a booklet which tells him about it, and there is an authorization which he can sign if he so chooses at that time.

The insurance does not take effect then, and not until 30 days later. If an employee does sign that authorization and does not later cancel it, it will start after 30 days.

1368

If the employee does not choose to, of course he does not take it, but if at a later date he wishes to take insurance he may obtain an application from the personnel office or I suppose he could send the shop clerk for it or call up and have one delivered through the plant mail, which he can fill out. If he does that he has to undergo a physical examination; in other words, he has to qualify in the ordinary sense to take out insurance. If he does it at the earlier time then the physical examination is waived.

By Mr. Whittlesey:

Q. Well, to summarize, that insurance is available to an employee at the time he first becomes an employee? A. That is right.

Q. After that it is available by the employee going to the personnel office or to the shop clerk and getting an application blank; is that right? A. The applications are in the personnel office.

Q. I see. A. That is where he has to get it.

Q. You stated that is the way the insurance is made available at the present time? A. That is right.

Q. Has there ever been a time prior to the present time at which that method varied in any respects? A. Yes, sir.

Q. What time was that? A. That was in July 1942.

Q. In what respect did the method of making insurance available vary then from what it is at the present time?

A. At the time the insurance company made a special proposition to us, that if an employee who had not previously taken insurance wished to do so during that limited period, their physical examination would be waived.

1370

We had a number of employees who had been turned down through physical examination. The company even said they would take those people in.

Q. You are talking about the insurance company now?

A. Yes, the insurance company said they would even insure those people whom they previously rejected, and that was an offer which we felt was something that was of the utmost importance to the older employees who had not taken insurance before, because they might not have qualified physically.

We rejected the plan of the insurance company, to their representatives handling the enlistment during this period, and proposed instead that we would send out a form letter and also a booklet explaining the circumstances of the offer and what the insurance was all about, and that we would pass these letters and booklets to the individual employees who according to our records were not covered.

1371

Q. When you say "send out" you mean through the mail? A. No.

Q. How? A. We addressed them by time clock numbers, by the employees' names, and turned them over to the timekeepers and we instructed the timekeepers to get them into the hands of the employees, that they attach them

1372

William L. Wilson—For Respondent—Direct

to the time cards in the time racks, and sometimes they were left at the racks for the employees to pick up.

Q. Yes. A. It was largely up to the timekeepers with our recommendation that they put them on the time cards.

Q. To summarize, you prepared this literature? A. That is right.

Q. And stated what the opportunity to get this insurance at the time was? A. Yes.

Q. You gave copies of the literature to the timekeepers? A. That is right.

1373 Q. And directed the timekeepers to attach to the time cards— A. That is right.

Q. (Continuing): —of employees who did not at that time have insurance; is that right? A. That is right.

By Mr. Whittlesey:

Q. Do you have anything to do with the company newspaper, Mr. Wilson? A. Yes, sir.

Q. What position do you occupy on the company newspaper? A. I am editor.

Q. How frequently is that published? A. Weekly.

1374 Q. The other officers of this newspaper, are they employees or management representative? A. Employees.

Q. Now, in connection with this insurance, was there anything published in the company's newspaper, do you recall? A. Yes, the whole idea was fully explained.

Q. I show you this clipping and ask you if this is a clipping from the company's newspaper and whether that relates to this insurance matter? A. Yes, this was published in the newspaper.

Q. And the manner in which it was to be made available? A. Yes.

Mr. Whittlesey: I would like to offer this in evidence.

William L. Wilson—For Respondent—Direct

1375

Mr. Rose: What is the date?

Mr. Whittlesey: August 7, 1942.

I offer that in evidence as Respondent's Exhibit 5.

Mr. Rose: No objection.

Mr. Rubenstein: I object to it on the ground it is irrelevant and immaterial to the issue.

Trial Examiner Hektoen: Let me see it a minute.

Mr. Whittlesey: Surely. Excuse me.

(Document handed to the Trial Examiner.)

1376

Trial Examiner Hektoen: I do not know whether it is material but it is relevant, the matter having been testified to by several Board witnesses.

I think it may be admitted. That will be Respondent's Exhibit 5.

(Thereupon the document above referred to was marked as Respondent's Exhibit 5 and was received in evidence.)

By Mr. Whittlesey:

Q. Was any reference made in this announcement to the method of solicitation in connection with the insurance? A. There was.

1377

Q. What was said on that particular point? A. It says, "The campaign is now on through the timekeepers, although there is no personnel solicitation".

Q. Mr. Wilson, did you ever hear of the so-called Fuselage Department Benevolent Fund? A. Yes, sir.

Q. When did you first hear of that? A. During these proceedings.

Q. Did you take any action with respect to the continuation of that fund after you heard about it? A. I did.

1378

William L. Wilson—For Respondent—Direct

Q. What did you do? A. I instructed the sectional supervisor of the Fuselage Department to stop it.

Q. Prior to hearing of this Benevolent Fund had you at any time in the past heard of the existence of similar funds? A. I have.

Q. In the plant? A. Yes, sir.

Q. Can you tell us what you now recall with respect to such funds? And what action you took with respect to each? A. A year or two ago, it was prior to October—

1379

Trial Examiner Hektoen: Excuse me one second.

This is going to turn up every time one of these things is taken up.

Mr. Whittlesey: That is right.

Trial Examiner Hektoen: Why don't we stipulate?

Mr. Whittlesey: If we can, yes.

By Mr. Whittlesey:

Q. I will ask you to list very briefly the funds you have heard of.

1380

Trial Examiner Hektoen: The only thing I am interested in is keeping the record down to the minimum.

Mr. Whittlesey: May I ask whether they will stipulate?

Trial Examiner Hektoen: Yes.

Mr. Whittlesey: Will you stipulate that a Benevolent Fund was heard of in 80 shop, one section of 80 shop and stopped when it was brought to management's attention?

Another fund was heard of in 80 shop from some employees, and that was stopped.

William L. Wilson—For Respondent—Direct

1381

A similar Benevolent Fund was learned of in 30 shop, and when the employees brought the attention of management to it, that was stopped.

A Benevolent Fund was heard of by management in part of 10 shop, and as soon as they heard of it it was stopped.

The Witness: . There was a police Benevolent Fund—

Mr. Whittlesey: That would be his testimony.

Mr. Rose: You read that so fast, I did not get it. Will you read that list, Mr. Reporter? 2

1382

(Record read.)

Mr. Whittlesey: Would that be a correct statement?

Trial Examiner Hektoen: That is what you are stipulating?

Mr. Rose: I will stipulate that he would so testify.

Trial Examiner Hektoen: All right.

Let the record show the witness, if asked, would so testify.

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Mr. Whittlesey: It is stipulated that the witness W. L. Wilson will testify that the following solicitation efforts were made by employees in the factory or offices of the Respondent corporation and, when brought to the attention of the witness, he issued instructions that they should be stopped, and, to the best of the witness' information, they were stopped:

1383

In the year 1941:

Police Benevolent Fund Lottery.
Police Benevolent Fund Collections.
Football Pool.
Chain Letters.
Sale of Flying Magazine.

1384

William L. Wilson—For Respondent—Direct

1942:

World Series Pool.
 Constitution Book.
 Christmas Gift Collections.
 Production Control Christmas Fund.
 American Legion Membership Drive.
 Grumann-Republic Baseball Series.
 Basketball Season Tickets.
 Collection for Purchase of Ambulance.
 East Bloomingdale Firemen's Function.
 Shop Service Flags.
 Chances on Plaque.
 Collection for Victrola Records.
 Chances on P-47 Painting.
 Pay Check Lottery.

1385

1943:

Night Shift Dance.
 Candy Salesman.
 Collections for Purchase of Ambulance.
 Chances on Model Planes.
 Pay Check Lottery.

1386

Trial Examiner Hektoen: It is so stipulated?
 Mr. Rose: So stipulated.
 Trial Examiner Hektoen: Very good.

By Mr. Whittlesey:

Q. You have heard the stipulation that has been read into the record. Is that right, Mr. Wilson? A. I—

Q. Do you know whether the various solicitations which you have described have been stopped by the company disapproved of the objects for which the solicitations were made or because of the company policy against permitting solicitation on company property?

William L. Wilson—For Respondent—Direct

1387

Mr. Rose: Objection.

Mr. Rubenstein: I join in the objection.

Trial Examiner Hektoen: Why?

Mr. Rose: It is a conclusion; also argumentative.

Mr. Whittlesey: I asked him whether he knew.

Trial Examiner Hektoen: He may answer.

The Witness: Yes.

By Mr. Whittlesey:

Q. Well, which?

1388

Mr. Rose: The same objection.

Mr. Rubenstein: I join in the objection.

Mr. Whittlesey: Will you read the question to the witness?

(Record read.)

The Witness: Frequently—

Mr. Rubenstein: Did you overrule the second objection?

Trial Examiner Hektoen: Yes; the same ruling.

The Witness: Frequently the cause was a worthy one but the solicitation was stopped because it violated the company rule against solicitation.

1389

By Mr. Whittlesey:

Q. Has the company management at any time given consideration to the advisability of permitting some solicitations and discouraging others? A. No.

Q. Has the company ever adopted the policy of permitting some solicitations and discouraging others? A. No.

Q. Has there been any reason for the company having a policy against permitting such solicitations and not allowing others? A. Yes.

1390

William L. Wilson—For Respondent—Direct

Q. What is the reason? A. There are so many of these cases which were very worthy that if the company should put itself in position to pick and choose between causes, say this is a worthy cause, we will permit this, and that is an unworthy cause which we won't permit, we would have it always argued by the people whom we turn down. Well, you permitted this other one. Why not permit ours?

1391

In other words, it would be impossible to draw lines. It is an all or nothing question because so many people have so many very fine objectives in mind when they want to conduct solicitations.

Q. Now, Mr. Wilson, I believe you testified previously here that the rule against solicitation was first published in March of 1941; is that right? A. I did.

Q. Have you got with you a copy of the rule book in which the rule is so published? A. I have.

Q. Will you produce it?

(Witness produces document.)

Mr. Whittlesey: I would like to have this marked for identification, please, as Respondent's Exhibit 6 for identification.

1392

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 6 for Identification.)

By Mr. Whittlesey:

Q. Is this Respondent's Exhibit 6 for identification the first published form of the Company's rule book? A. I believe it is.

Q. Does that contain a rule with respect to soliciting? A. It does.

Q. On what page of the book is it? A. Page 17.

Q. Is that rule, as set forth on that page, in the same

William L. Wilson—For Respondent—Cross

1393

form or in a different form than the rule as it was in effect in January 1943? A. It is the same form.

Mr. Whittlesey: I would like to offer this in evidence.

Mr. Rose: No objection.

Trial Examiner Hektoen: It is received in evidence.

(Thereupon the document previously marked for identification as Respondent's Exhibit No. 6 was received in evidence.)

1394

Mr. Whittlesey: I am through.

Cross examination by Mr. Rose:

Q. Now, in connection with that stipulation and the list of matters referred to in that stipulation concerning what you will testify, in any instances were arrangements made for the placing of tickets in the plant? A. In one case arrangements had already been made for that.

Q. You mean prior to the solicitation referred to in your testimony arrangements had already been made? A. Yes.

Q. In what instance was that? A. That was in the instance of the night shift dance in 1943.

1395

Q. And what arrangements were made in connection with the tickets? A. The tickets had been placed on sale in the offices of the sectional supervision through the shop clerks.

Q. And they were available there for purchase? A. They were.

Q. And were employees notified that tickets were available in the offices for purchase? A. Yes.

Q. And how were they notified, by publications on—
A. By publications and posters.

Q. By publications on the bulletin boards? A. I don't know.

1396

William L. Wilson—For Respondent—Cross

Q. But you say they were notified by publications and posters? A. Yes.

Q. In the plant, of course? A. Yes.

Q. And was the sale of tickets for that event also announced over the public address system? A. I don't know.

Q. You mean by that you have no recollection? A. I don't know—yes.

1397

Q. Well, I just want to know whether you don't know or you have no recollection. A. I don't know. Could I amend my last statement? The tickets for the Grumann-Republic Baseball game were on sale in the personnel office at the time when we stopped it in the plant. In other words, a similar situation to the parts plant dance.

Q. With reference to the dance, I thought you were talking about the night shift dance in 1943. A. I was, true. Now I state that the Grumann-Republic Baseball game of 1942, the sale of tickets for that had been arranged in the personnel office and in the cafeteria and we learned that some tickets were in the plant and we stopped that, the sale of tickets in the plant.

Q. But the method of the sale—strike that.

1398

Did the method of the sale of tickets for the night shift dance, as you have described, continue up to the time of the affair? A. I did.

Q. Now; directing your attention again to that stipulation did all those events mentioned involve the transfer of money? A. I should have to look at the list.

(Inspecting document.)

With the exception of the chain letter and the American Legion Membership Drive.

Q. All the others involved the transfer of money? A. Yes.

Q. Very briefly, so that we will know what you refer to, what was this chain letter? A. Well, the chain letters in-

William L. Wilson—For Respondent—Cross

1399

volved a transfer of war savings stamps in one case, instead of money, and chain letters were a means by which one person would pass this letter on to the next and the recipient of the letter was supposed to send the money or the stamps to the man, the individual, whose name appeared at the top of the list. Then his name was added to the bottom of the list and he had an opportunity to work at the top of the list sometime and receive a reward.

Q. Now, with reference to the company newspaper you referred to, how is that distributed? A. It is handed to the employees in the factory by the timekeepers, and it is delivered to other offices.

1400

Q. At the opening of your testimony you referred to some event that you said was stopped several months ago. I didn't quite get what event that was. A. I don't recall. Perhaps the Examiner does.

~~Trial~~ Examiner Hektoen: Was it the wing shop?

~~The~~ Witness: The wing shop.

Mr. Rose: That is all.

By Mr. Rubenstein:

Q. This wing shop Benevolent Fund, how long was it in existence? A. I don't know.

1401

Q. How did it come to your attention? A. Through the testimony in this case.

Q. Through the testimony in this case? A. Yes.

Q. Now, until this case was heard, you didn't know about the wing shop Benevolent Association? A. I did not.

Trial Examiner Hektoen: Let me interrupt. My notes indicate the Benevolent Fund in the wing shop is something different from the Fuselage Benevolent Fund which was stopped after the testimony in this case, and you indicated in your testimony the wing shop was stopped several months ago.

The Witness: That is true.

1402

*William L. Wilson—For Respondent—Cross**By Mr. Rubenstein:*

Q. I asked about the Benevolent Fund in the wing shop. You testified you didn't know about it until you heard the testimony in this case? A. That is true.

Q. Do you know anything about the wing shop Benevolent Fund? A. Yes.

Q. You testified before it was stopped several months ago? A. Yes.

1403

Q. If you hadn't heard anything about it until this proceeding, how did you testify of your own knowledge that it was stopped several months ago? A. I asked about it and was told that it had been stopped.

Q. Who told you that it had been stopped? A. My assistant.

Mr. Rubenstein: At this time I move that the previous testimony of the witness as to the wing shop Benevolent Fund be stricken because it was not testimony of his own knowledge.

Trial Examiner Hektoen: With the explanation he has just given it may stand.

Mr. Rubenstein: It was entirely hearsay testimony and we took it for granted he knew about it.

1404

By Mr. Rubenstein:

Q. So you testified here today about a fact that occurred several months ago only because somebody told you about it? A. Yes, sir.

Q. And who is the one who told you about it? A. Mr. M. C. Monroe, assistant director of industrial relations.

Q. M. C. Seaman Roe? A. M. C. Monroe.

Q. How long have you been director of industrial relations? A. Since May of 1942.

Q. And how long has M. C. Monroe been your assistant? A. Since August or September of 1942.

Q. Since August or September of 1942? A. Yes.

William L. Wilson—For Respondent—Cross

1405

Q. And before that was he associated with your office?
A. He was in my department.

Q. Does Mr. Monroe have authority of his own to issue orders with regard to the dissolution of various organizations in the shop?

Mr. Whittlesey: Where has there been testimony Mr. Monroe ever exercised such authority?

Mr. Rubenstein: I am asking him the question.

Trial Examiner Hektoen: The question may be answered.

The Witness: Yes.

1406

By Mr. Rubenstein:

Q. He does? A. Yes.

Q. And he doesn't have to report to you about it? A. He does not.

Q. And in this case do you know whether Mr. Monroe disestablished the wing shop Benevolent Fund?

Mr. Whittlesey: His testimony is somebody else did.

The Witness: He did not.

1407

By Mr. Whittlesey:

Q. He did not disestablish it? A. No, sir.

Q. And he reported to you that it was disestablished?
A. Yes, sir.

Q. Did he tell you who reported it to him? A. Mr. Codignotto.

Q. Mr. Codignotto? A. Yes.

Q. And who is Mr. Codignotto? A. He is sectional supervisor of the wing shop.

Q. And when did Mr. Codignotto report it to Mr. Monroe? A. Within the past week. I don't recall it.

Q. Within the past week? A. Yes, sir.

1408

William L. Wilson—For Respondent—Cross

Q. This wing shop Benevolent Fund was disestablished several months ago by Mr. Codignotto? A. Yes, sir.

Q. And Mr. Codignotto has not recorded anything about the functioning of the Fund until three months ago when he disestablished it; is that right? A. I don't know.

Q. You don't know? Do you know why Mr. Codignotto found it necessary to report to Mr. Monroe a week ago? A. I asked Mr. Monroe to find out about the existence of a wing shop Benevolent Fund and stop it if it was in existence.

1409

Q. When did you ask Mr. Monroe to find out? A. The past week.

Q. Can you give us the date when you asked him? A. I cannot.

Q. You cannot? A. No.

Q. What makes you say it was within the past week? A. Because I learned of the existence of a wing shop Benevolent Fund in this proceeding.

Q. This proceeding; is that right? A. Yes, sir.

Q. This proceeding started on the 15th of April. That was last Thursday. Now when did you hear the first testimony about this wing shop Benevolent Fund? A. I don't remember.

1410

Q. You don't remember? You say you first learned in this proceeding. That means you must have heard testimony here? A. Yes.

Q. Can you tell us when you heard that testimony? A. No, sir.

Q. Can you tell us who testified about it? A. Mr. Stone, I believe.

Q. You believe so? A. Yes.

Q. Do you remember when Mr. Stone testified? A. Last Thursday, I believe.

Q. And when did you speak to Mr. Monroe? A. I don't recall.

Q. You don't recall? A. Subsequent thereto.

William L. Wilson—For Respondent—Cross

1411

Q. Don't you think, Mr. Wilson, that when you come here to testify as to happenings that occurred just a few days ago you should, at least, be able to tell us when and how things happened.

Mr. Whittlesey: I object to that, your Honor.

Trial Examiner Hektoen: Sustained.

Mr. Rubenstein: Sustained.

By Mr. Rubenstein:

Q. So you, of your own knowledge know nothing about the existence of the wing shop Benevolent Fund except what was told you last week by Mr. Monroe? A. I take exception to the statement "last week". I don't know whether it was last week or not.

1412

Q. You don't even know whether it was last week? A. No, sir.

Q. It might have been two weeks ago? A. No, sir; it was within the past week.

Q. What did you tell Mr. Monroe to find out about? A. I told Mr. Monroe I had heard it testified here there was a wing shop Benevolent Fund, there had been a wing shop Benevolent Fund, which appeared to be functioning, and that he should stop it.

1413

Q. And what did he do? A. I suppose he—well, he talked to Mr. Codignotto.

Q. Did you see him talk to Mr. Codignotto? A. No, sir.

Q. And did he tell you what Mr. Codignotto told him? A. Yes, sir.

Q. What did he tell you? A. He told me that Mr. Codignotto said that some months ago he had come to the conclusion, as a result of a special drive that we put on to wipe out Christmas gift collections, that the collections for the wing shop Benevolent Fund was also a collection that shouldn't exist, and, therefore, he asked that the wing shop Benevolent Fund stop. He—well, that's all.

1414

William L. Wilson—For Respondent—Cross

Q. So then Mr. Codignotto dissolved it of his own opinion; is that right? A. So Mr. Monroe reported to me.

Q. So that you had nothing to do, or the industrial relations department had nothing to do, with the dissolution of the wing shop Benevolent Fund? A. Nothing, sir.

Q. Do you know how long that wing shop benevolent fund was in existence? A. No, sir.

Mr. Rubenstein: I am sorry, but he testified to things and I would like to find out whether he knows about them.

1415

It is off the record.

By Mr. Rubenstein:

Q. Do you know whether the RSO is still in existence? A. It is.

Q. And they are still collecting money? A. They are starting a collection.

Q. They are starting a collection? A. Yes, sir.

Q. In the shop? A. Yes, sir.

Q. And you feel that the RSO is an organization that should be permitted to make collections? A. Under proper regulation, yes.

1416

Q. Well, what do you call proper regulation? A. The RSO, in its forthcoming or existing effort to raise money, is doing it by the same manner we use for the Red Cross, you see. Envelopes are being put out in the plant, boxes are being put out. Employees who wish to can contribute money in an envelope and drop the envelope in a collection box. There will be no solicitation.

Q. You know the RSO is giving out buttons for their contributions? A. I don't.

Q. Did you ever see an RSO button in the plant? A. Yes.

Q. Do you know how these buttons are distributed? A. Delivered to contributors.

Q. Given to contributors; is that it? A. Yes, sir.

William L. Wilson—For Respondent—Cross

1417

Q. Now, who gives them out? A. Some members of the factory council or others, perhaps mail people, mail girls.

Q. And they are given out to contributors? A. No, sir.

Mr. Whittlesey: Are you talking about what was going on before or now?

Mr. Rubenstein: I asked the question.

By Mr. Rubenstein:

Q. And these buttons are given out in the plant? A. I didn't testify they are being given out. I answered your question in the past tense. I don't know what is going on presently.

1418

Q. I didn't ask you about today. As far as you know these buttons were given out in the plant? A. Will you state a time?

Q. When they were given out, Mr. Wilson. A. Yes.

Q. It is a plain question. You should have understood it.

You testified about this factory council. You say it consists of representatives of management and employees? A. Yes.

Q. How are the employees designated or picked for the factory council? A. In the beginning the employees on the factory council reached that position or were named to that position because they had won suggestion contest prizes in the company's suggestion contest program, and all employees who had won such prizes within the previous year were named to the council.

1419

Q. Who named them? A. I don't recall.

Q. You don't recall? A. No.

Q. Isn't it within your supervision to supervise especially activities of employers and employees? A. Yes.

Q. And you don't recall who designated the people for the factory council? A. I am afraid I don't.

Q. And you said this was before. Is there any new procedure now for designation of the members of the factory council? A. Yes.

1420

William L. Wilson—For Respondent—Cross

Q. What is the new procedure, if you know? A. Now we have a factory council organized, or it has organized itself, so that members retire at the end of a stated period, I don't know whether it is four months or six months, in order to have a revolving membership, and new representatives are elected by the groups from the particular plant who are on the council; the members are elected only from suggestion award winners.

Q. Let's get clear. Assuming you have a representative from shop 50, let's say. A. Yes.

1421

Q. Now, there are some members that won awards? A. Yes.

Q. Now, these members elect a representative to the factory council? A. When it comes time for one man to retire because he has served his term, the entire list of names of people who have subsequently won awards and not been members of the council are submitted to the delegation from 50 shop, as long as you picked 50 shop, or to the delegation from the whole three shops in the assembly plant, I am not sure which, and then those people elect a man from this list.

Q. Do they meet for that purpose? A. Yes.

1422

Q. And they have nominations? A. The nominations are the list of eligible people.

Q. And then, if someone wants specifically to be elected, he tries to be elected by seeing other people and have them vote for him? A. I don't think anyone has ever sought election that way.

Q. They are selected from members or representatives from these chosen employees? A. Well, membership on the factory council is one of the prizes in the suggestion award plan, one of the prizes for increasing production.

Q. They are elected by those who have won those prizes? A. Yes.

Q. Do you know whether the volunteer firemen's organizations are still functioning? A. We still have volunteer firemen.

William L. Wilson—For Respondent—Cross

1423.

Q. And they have members in the shop? A. That was one trouble with this particular solicitation. The volunteer firemen weren't supposed to have an organization. They were just supposed to be named by their foremen to take care of a particular fire extinguisher or hose, just like a man may be assigned to watch a dangerous condition.

Q. But, instead of what it was supposed to be, it became a membership organization? A. Well, it apparently tried to.

Q. And they were getting members into their ranks? A. I don't know.

Q. You say they apparently tried to. You mean they were organizing on a membership basis? A. I don't know; I don't know about that.

1424.

Q. But you know they are still functioning? A. We still have volunteer firemen who fight fires.

Q. And you know that they are not organized on the basis that the foremen wanted to organize them; isn't that right? A. I didn't understand the question.

Q. Well, you started to say something that the firemen wanted one thing and then a different organization was established? A. No; I didn't. I said a volunteer fireman was simply named by the foreman or by one of the professional firemen to take care of a particular piece of fire-fighting equipment. That is just all there is to it.

1425

Q. Well, if a man wants to become a volunteer fireman can he join them? A. Oh, if there is a place to use his services, I think he might offer to fight fires.

Q. And he would go to the head of the volunteer fire department; is that right? A. No; I don't think so. I believe he would just ask his foreman or sectional supervisor if he could take care of it. If there were any fires he could run out of the building or absent himself from his work to be a fireman.

Q. You don't think or you don't know? A. I don't know.

1426

William L. Wilson—For Respondent—Cross

Q. You don't know whether the volunteer firemen have a chief? A. They do.

Q. They do have a chief? A. Yes, sir.

Q. And he is the supervisor of all volunteer firemen's activities; is that right? A. Yes, sir.

Q. Now, this sale of tools is still going on? A. I don't know.

Q. You testified here extensively about how the man was selling these tools and why the man was selling these tools. Do you know whether he still sells them? A. I don't.

1427

Q. Did you stop him? A. Never.

Q. Do you know whether anyone else ever stopped him? A. No; I don't know.

Q. There is something that was not very clear to me and, though it may be a bit repetitious, I would like to clear it up.

You testified that some people were admitted with a physical examination and others without a physical examination? A. I would object to the word "solicitation."

Q. All right; say whatever you want. The question is still there. A. The question is—would you repeat the question, please, or have it read?

1428

Mr. Rubenstein: Will you read the question, please?

(Record read.)

The Witness: Yes.

By Mr. Rubenstein:

Q. Will you tell us what plan it was that needed a physical examination? A. Excuse me, Mr. Rubenstein. I was going to ask the Master something, if I may.

Trial Examiner Hektoen: Surely.

The Witness: Was my word "objection" on the record there? It wasn't read back to me.

William L. Wilson—For Respondent—Cross

1429

Trial Examiner Hektoen: I can't say. It doesn't make much difference.

Now, is there a question pending?

Mr. Rubenstein: Yes; there is a question pending.

Trial Examiner Hektoen: Read it, Mr. Reporter.

(Record read.)

The Witness: What plan?

By Mr. Rubenstein:

1430

Q. What insurance plan? A. That needed a physical examination?

Q. Yes. A. The company group insurance plan.

Q. You mean anyone applying for group insurance had to be examined physically? A. No, sir. Under normal circumstances people who do not join the plan within a stipulated period following their employment, two months, three months, I don't know what the period is, are required to present proof of their physical acceptability.

Q. And you admitted that your supervisors or lead men attempt to help the employees to get their insurance without the necessity of a physical examination? A. They may. Could I have it in parts of me and them?

1431

Q. Yes, you and them or either of you. A. We do, by pointing out to employees that if they act promptly they will get it without it.

Q. Some testimony was given here that a lead man approached an employee at his bench and advised him to fill out an application for insurance. That is possible? A. That is possible.

Q. You wouldn't fire a lead man for doing that, would you? A. No; but would suggest to him that he not do it. We wouldn't want him to persist in it.

Q. You did not put out a notice or an order that he should not do it?

1432

William L. Wilson—For Respondent—Cross

Mr. Whittlesey: Do what?

Mr. Rubenstein: Tell people to take out insurance.

The Witness: I recall none except the statement in the newspaper.

By Mr. Rubenstein:

Q. This newspaper referred to in your exhibit? A. Yes.

Q. Dated August 7, 1942; is that it? A. Yes.

1433

Q. When did you first hear of the fuselage benevolent fund? A. During these proceedings.

Q. During this proceedings. A. Yes, sir.

Q. That means since last Thursday; is that it? A. On last Thursday.

Q. Until then you haven't heard about it? A. Until then I hadn't heard about it.

Q. You heard it testified that the Fuselage Benevolent Fund was in existence for about two years or so? A. Yes.

Q. And during all that time you hadn't heard of it? A. I had not heard of it.

Q. And when did you ordered stopped? A. Last week.

1434

Q. Last week when? A. Saturday.

Q. You mean this past Saturday? A. Yes.

Q. How did you have it ordered stopped? A. I made it my business to see Mr. Bofinger and I told him that I heard they had a Benevolent Fund taking up collections in the fuselage department and he would have to stop it at once.

Q. That was this Saturday? A. Yes.

Mr. Rubenstein: That is all.

Mr. Whittlesey: No questions.

Mr. Rose: I had one more question I wanted to ask Mr. Wilson.

Trial Examiner Hektoen: Go ahead.

Harry Lebair—For Respondent—Direct

1435

By Mr. Rose:

Q. Do you stop activities or solicitation in connection with a lottery because it is a lottery? A. There is a combination of motives there.

Q. The fact there was a lottery would be one of the things that would impel you? A. Yes.

Redirect examination by Mr. Whittlesey:

Q. And also because it would be a violation of the company rule? A. Yes.

Trial Examiner Hektoen: Thank you, Mr. Wilson.

1436

(Witness excused.)

HARRY LEBAIR was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lumbard:

Q. Will you state your full name and address, please, Mr. Lebair? A. 11 Franklin Avenue, Hewlett, Long Island.

Q. Are you employed by Republic Aviation Corporation? A. Yes, sir.

1437

Q. How long have you been employed by that company? A. Since August 11, 1941.

Q. What is your position there now, Mr. Lebair? A. Lead man.

Q. In what shop are you the lead man? A. 01 shop.

Q. In what section of that shop? A. Section D, cowl detail.

Q. Did you tell us how long you had been lead man? A. About 11 months, approximately.

Q. Now, was that your position and were you so assigned during January of this year? A. That's right.

Q. Who is your foreman? A. Henry Fleassa.

1438

Harry Lebair—For Respondent—Direct

Q. And your supervisor? A. Rudy Belkau.

Q. And your sectional supervisor? A. Ed Romeo.

Q. Do you remember—strike that.

Do you know Mr. Kahler? A. Yes, sir.

Q. Do you remember that in January of this year he was released by the company? A. Yes, sir.

Q. Sometime prior to that, Mr. Lebair, had Mr. Fleassa, the foreman, spoken to you with respect to CIO buttons? A. Yes; he had.

1439

Q. To whom did he speak at that time? A. He spoke to the other lead men and myself.

Q. Can you tell us about when that was? A. I would say it was in the middle of the winter, prior to—well, I would say it was around the latter part of December or early part of January.

Q. It was some weeks before Mr. Kahler was released? A. That's right.

Q. At the time Mr. Fleassa spoke to you had you noticed that any men in your shop were wearing CIO buttons? A. Yes, sir.

Q. Did you give us any estimate of about how many such buttons you had noticed in your shop at that time? A. By the shop you mean the section or the 01 shop?

1440

Q. Let's take the whole 01 shop first? A. I would say three or four.

Q. Were any of those men in your section? A. Yes.

Q. Now, when Mr. Fleassa spoke to you and the other lead men, what did he tell you about these buttons? A. He told us that it was perfectly all right with the company for them to be wearing their CIO buttons and that we should not make any remarks about them and just treat them as an ordinary button, not make any difference what it stood for.

Q. Was there a man in your section named Tomford? A. Yes, sir.

Harry Lebair—For Respondent—Direct

1441

Q. Can you state whether or not prior to the time that Kahler was released you overheard him speak about the CIO? A. I beg your pardon; will you read that back to me?

Mr. Lumbard: The reporter will read it to you.

(Record read.)

The Witness: That is Kahler speaking about the CIO?

By Mr. Lumbard:

Q. I meant Tomford. My question was whether you had heard Tomford speak about the CIO prior to the time Kahler was released? A. Yes, sir.

1442

Q. You did? A. Yes, sir.

Q. Did you ever say anything to Tomford as to whether he should or should not talk about the CIO in the plant? A. No, sir.

Q. Do you remember whether or not Tomford wore a button? A. Tomford wore a button prior to the day that Kahler was released.

Q. Can you give us some idea what kind of button it was? A. A white button with a UAW-CIO on it.

Q. Anything else on it? A. Well, it had a red and blue colored wreath around it somewhat.

1443

Q. Was it like one of these two buttons I now show you? A. You are talking now about Tomford's button; is that right?

Q. Yes. Was it like either one of these two buttons I now show you, Exhibits 1 and 2 for identification?

Trial Examiner Hektoen: Of the union.

By Mr. Lumbard:

Q. Of the union. This top one is "1" and this one is "2." A. Well, it had the UAW-CIO but didn't have that American flags crossed like that, and it was a smaller button than either one of those.

1444

Harry Lebair—For Respondent—Direct

Q. Now on this day when Kahler was released, Mr. Lebair, can you state whether or not on that day it came to your attention that Mr. Kahler was wearing a steward's button? A. It didn't come to my attention. It was brought to my attention.

Q. How was that brought to your attention? A. People in the shop told me that he was wearing a button.

Q. You mean employees in your section? A. That is correct, sir.

Q. Did more than one tell you that? A. Yes, sir.

1445

Q. About how many? A. Two or three or four.

Q. And did they tell you what kind of a button Mr. Kahler was wearing? A. They said he was wearing a button that said "Steward" on it.

Q. Had you noticed that yourself at the time they spoke to you? A. No; I had not.

Q. What part of your section was Kahler working in on that day? A. He was working in the rear of our section to the left.

Q. Did you then see Kahler? A. Yes; I did.

Q. How long after these talks where the men told you about the button did you see Kahler? A. 10 or 15 minutes afterwards.

1446

Q. Did you go over to where he was? A. I did.

Q. What did you do when you got there? A. I asked him what the steward's buttons stood for.

Q. Did you see the button? A. I did.

Q. And what did he say? A. He said that the steward's button—a steward—he didn't say himself—he said a steward would represent the fellows on the bench, handle their complaints.

Q. Did you have any further talk with him at that time? A. Yes. He asked me if I was a member of the Factory Council and I said yes.

Q. You said yes? A. I did.

Q. Was there any further talk between you? A. Yes. When I told him I was a member of the Factory Council

Harry Lebair—For Respondent—Direct :

1447

he said—during this conversation we had a conversation, he asked me in this conversation, after he asked me whether I was a member of the Factory Council, whether or not I was known all over the shop as a representative of the Factory Council. I didn't answer that.

And then he said that I wasn't a proper representative of the shop because I wasn't a worker at the bench.

Q. Did you have any further talk with him at that time?

A. No; that was the sum and substance of it.

Q. About how long did that talk last, would you say?

A. Oh, about 30 seconds, a minute or so. You asked for further conversations at that time, you remember?

1448

Q. What? A. Your question was did I have any further conversations with him at that particular time.

Q. At that time, that's right?

Did you ask him whether he was serious about this business or anything to that effect? A. No, sir; I don't remember that.

Q. I want to read you what Kahler testified to here in this hearing on page 360. He was asked by the Board's counsel, I believe:

"Did Lebair say anything to you that day with reference to the button?"

1449

Kahler said:

"Yes, he walked over to me in the morning, while I was at work, and he asked me if I was serious about this business, and he pointed to the steward's button. . . ."

And then Kahler went on to say:

. . . "and I stated that I was."

Did that occur during your talk with him? A. No, sir.

1450

Harry Lebair—For Respondent—Direct

Q. Do you remember whether Fleassa, the foreman, was at the shop at this time, on this day? A. He was absent that day.

Q. Did you, after this incident, after this talk with Kahler, talk to Balkau about it? I believe you testified he was a supervisor? A. That's right; he is my direct supervisor.

1451

Q. Did you talk to Belkau later about it? A. I spoke to Mr. Belkau after smoking period, which is 10 o'clock, and asked him what I should do about it. He advised me to let everything go for a while and he would take care of it.

Q. Did you later talk to Romeo about it? A. Yes. Mr. Romeo asked me who the man was that was wearing a steward's button, and I pointed out Kahler to him and he told me to let everything go and he would take care of it.

Q. Was that after you told Belkau that Romeo had this talk with you? A. Yes; after I had spoken with Rudy Belkau Mr. Romeo came up to speak to me.

Q. Did you say anything to Romeo about Kahler at this time? A. Yes; I did tell him that he was one of our good men in the section.

1452

Q. Did Romeo tell you whether or not you should do anything? A. He told me not to do anything, just carry on.

Q. At or around the lunch hour did you hear Kahler make any statement about talking to some other people?

A. He told me during the lunch period, prior to going to work, that he was going to get it settled one way or another; that he had an appointment to go upstairs to see Wilson, Kress and Lasker and a few others.

Q. After that did Kahler leave the shop? A. Yes. Mr. Romeo came out at the section and asked me to get Kahler and bring him to him, and I brought Kahler up to Romeo and Kahler and Romeo walked up the main aisle, and that is the last I saw them.

Harry Lehair—For Respondent—Direct

1453

Q. Later on did Kahler come back to work? A. He did.

Q. After Kahler returned to work—this was in the afternoon? A. This was in the afternoon.

Q. Did you have any talk with Romeo? A. After Kahler came back to work Romeo came to me and spoke to me and said they were going to give Kahler another chance to take off this button, and if he took off this button he would be able to stay.

He said to me, "If he takes off his button in the next hour or so, report to me, and report to me if he doesn't take it off in the next hour", and at the end of the hour Romeo came out and asked me if he was still wearing his button. I went up and he was still wearing his button, so I reported to Romeo he was still wearing the steward's button.

1454

Q. After that was Kahler released? A. Yes; the clerk of the 01 shop brought his release out about 5:15 or something.

Q. Before you reported to Romeo about Kahler's continuing to wear his button, did you have any talk with Kahler? A. I tried to get him to more or less—I didn't come out and really say it; I asked him at that time—I went over and looked at him and he said to me—I more or less looked at him in a way and he could read my mind, because I think he knew what I was thinking about—

1455

Mr. Rubenstein: I move to strike all that out.

Mr. Lombard: All right; strike it all out.

By Mr. Lombard:

Q. What did he say to you or you say to him? A. He said he was going to stick right with it and wear the button.

Q. Do you know Robert Katz? A. Yes.

Q. Did you and he work in the same section at one time? A. That's right.

Q. Was that before you became a lead man? A. Yes.

1456

Harry Lebair—For Respondent—Cross

Q. And was there a time when he spoke to you about the union? A. Yes.

Q. How long ago would you say it was when he first spoke to you about the union? A. I would say it was about a year February, this past February.

Q. Did he ever talk to you about your joining the union? A. Yes, sir.

Q. Where did he have such a talk with you? A. At my house.

1457 Q. Then sometime after that you became a lead man? A. That's right.

Q. About how long afterwards, would you say? A. Oh, about four months, four or five months after that.

Q. When you became a lead man did you ever report to any foreman or supervisor that Katz was interested in the union or had been talking about the union? A. I never did.

Q. Have you ever been asked by any foreman or supervisor to report the names of the men who wore union buttons? A. No, sir.

Q. Or the names of any men who you thought might be members of the union? A. No, sir.

1458 Q. Have you ever inquired of the men which of them belonged to the union? A. No, sir.

Mr. Lumbard: You may examine him.

By Mr. Rose:

Q. Who did you say your supervisor is now, Mr. Lebair? A. Rudy Belkau.

Q. What is his job? A. Supervisor of our shop.

Q. Well, who is the sectional supervisor? A. Ed Romeo.

Q. And how long has he been your sectional supervisor? A. Ever since John Kaferstein went on nights. I can place it by instances but I can't give you an exact date, of course.

Q. Would you say since the early part of January of this year? A. I would say he has been my supervisor since the early part of January.

Q. This year? A. That's right; or the middle of January. I don't want to get tied down within two or three days. It was around in there, though.

Q. During that time you have been on the day shift; is that right? A. That's right.

Q. Now, did you tell Mr. Belkau that Mr. Kahler was serious about that steward's button he was wearing? A. No, sir.

Q. What did you tell Mr. Belkau? A. I said we had a fellow wearing a shop steward's button; what shall we do about it?

Mr. Rose: That is all.

By Mr. Rubenstein:

Q. Mr. Lebair, you testified Fleassa was your foreman? A. That is correct.

Q. And he talked to you about CIO buttons in the middle of winter or the latter part of December or January?

A. Something around there; yes.

Q. Can you recall the occasion that he spoke to you about CIO buttons? A. When the buttons were being flaunted out in the open.

Q. When the buttons were being flaunted out in the open? And what did he do? A. We had some buttons being shown in our particular section and I asked him what we should do about it.

Q. You asked him about it? A. That's correct; I asked him. I asked him what the company's policy toward wearing the union button was.

Q. Now, let's get clear on it. You went out in the shop and you saw union buttons; is that right? A. No; I didn't go out in the shop looking for union buttons.

Q. Where did you see the union buttons? A. On the fellows working right at the bench right in front of me.

Q. Right in front of you? A. That's right.

1462 /

Harry Lebaire—For Respondent—Cross

Q. How many people do you supervise? A. 25, 20 to 25.

Q. And those people under your supervision wore the union buttons? A. I didn't say that. I said there were three or four I knew of over the whole shop.

Q. Not in your department only? A. One in my department.

Q. One in your department and two or three among the rest? A. That's correct.

1463

Q. What is the name of the one in your department that wore that steward's button, CIO button? A. You don't mean the steward's button; you mean the CIO button, plain little button?

Q. That's right. A. Tomford, Clarence Tomford.

Trial Examiner Hektoen: Did you see Tomford wearing a button late in December or early in January?

The Witness: I did.

Mr. Rubenstein: Does that satisfy you?

Mr. Lumbard: Yes; that fixes it.

The Witness: Are we going to get tied down to one day or two days?

1464

Trial Examiner Hektoen: You are not being tied down at all, Mr. Witness.

By Mr. Rubenstein:

Q. That was the first time when you spoke to your supervisor or foreman. At that time you saw Tomford wearing a button? A. That was the time we had a conference, when I saw Tomford wearing the button.

Q. And you saw some more men in your department—
A. At the same time.

Q. Do you know their names? A. No, sir.

Q. Do you know in whose departments they were? A. No, sir.

Harry Lebair—For Respondent—Cross

1465

Q. And then you called for Fleassa? A. We all work on the same bench together.

Q. You and Fleassa? A. That's right.

Q. Now, you say that you heard Tomford speak about the CIO in the plant? A. Many times.

Q. Can you say when he spoke? A. He spoke to me directly.

Q. And asked you to join? A. No, sir.

Q. Do you know whether he spoke to anyone else? A. No, sir.

Q. You don't know? A. Well; wait a minute—you are trying to give an implication there. I said he spoke about the union and you asked me whether he spoke to other people about the union. Now I don't know whether he spoke to other people about the union in the same vein he spoke to me about the union.

1466

Q. Do you know whether he spoke to other people about the union? A. No, I don't. I never witnessed it.

Q. Now, did Tomford keep on wearing his button from the first time you noticed it? A. Every time I have ever noticed Milton or Clarence Tomford, or whatever his name is, he was wearing a union button.

Q. Now, you testified on the day of Kahler's release somebody told you that he was wearing a steward's button? A. That's correct.

1467

Q. And do you remember who told you? A. No; I don't.

Q. You don't remember? Was it someone of your department? A. One in my shop, yes.

Q. Was Kahler working in your department? A. That's right.

Q. Under you? A. That's right.

Q. And you had 25 people? A. That's right.

Q. And those two or three people that spoke to you about Kahler wearing a steward's button were of your department? A. That's right.

1468

Harry Lehair—For Respondent—Cross

Q. You are sure of that? A. I consider that day I was the acting foreman. I had charge of 50 men. So they were in my department that day.

Q. Now, let's get this clear. Were they in your department or in the department right near you, in the other 25?

A. The other 25—there are two lead men, about 25 apiece, and a foreman in charge of them.

The foreman was absent and I don't want to say whether they were in that lead section or the other man's lead section.

1469

Q. You don't want to say or you don't know? A. No; I don't want to say. I was in charge of that shop that day.

Q. If they were your men would you have remembered them? A. It doesn't make any difference. I don't want to pin one person down, who told me. I don't remember the names well enough to know who told me. I know all their names but don't remember the names of the people who told me.

Q. That means you don't remember who told you? A. That's correct.

Q. Do you remember where they told you? A. Yes, I do.

1470

Q. Where? A. Right in front of the section.

Q. In front of the section? A. Yes, sir.

Q. In the office? A. No; we don't have an office near the bench, in front of the bench. They are rows of benches and our bench is in the front.

Q. These people came over to your bench and told you Kahler was wearing a steward's button? A. One person came over and told me; another told me as I was going through the section. I was told three or four times in half an hour.

Q. When the first fellow told you, what did you do? A. Nothing; I was too busy.

Q. And you kept on doing what? You kept on being busy? A. That's right.

Harry Lehair—For Respondent—Cross

1471

Q. Then when did the next fellow tell you anything about it? A. After I found out about it I was busy. I was busy there for a while and a little later, ten or fifteen minutes, I went back to find out whether he had it.

Q. About ten or fifteen minutes later another fellow came over to you? A. No. Ten or fifteen minutes after I found out about it I went back and found out whether he had his button on.

Q. Let's see. A fellow came over to you and told you about it and you were busy and kept on working; is that right? A. No, I didn't say that.

1472

Q. What did you say? A. Well, if I did say it, I will change it.

Q. All right; change it. A. I said I found out he was wearing a button from three different fellows and, explaining how I found out, one fellow here, as I was walking through told me about it, and I went up to where Ray Kahler was working in the section.

Q. Will you tell us, and try to say it clearly, who told you first, what you did and how you went over. A. I think that is pretty clear.

Q. Did all the three fellows tell you at the same time?

Mr. Lumbard: He didn't say that.

1473

Trial Examiner Hektoen: Well, let him answer. Very simply, first one came up and then another came?

The Witness: That's right; and then another. I have work and have to hand it out, and I go around early in the morning and check up to see how the work is going on. The time from when I first found out about it until the last person told me was a space of about ten or fifteen minutes, and I went back directly to find out.

1474

Harry Lebar—For Respondent—Cross

Q. I want to know, after the first fellow told you, what did you do? A. I kept on with my job.

Q. How long did you keep on with your job? A. I just said that; ten or fifteen minutes or so.

Q. All right. Now during those ten or fifteen minutes you kept on with your job the other people came over to you? A. Part of my job is to go around speaking to everybody to see how everything is going, and they spoke to me as I went around.

Q. Your job is to go around; is that it?

1475

Trial Examiner Hektoen: Part of it.

Mr. Lombard: I think he said that several times, but I suppose the answer is yes.

Mr. Rubenstein: Let the witness answer.

Mr. Lombard: It is part of your job to go around?

Mr. Rubenstein: I didn't ask if it was part of his job to go around. I asked if it wasn't his job. Don't help him, Mr. Lombard.

Trial Examiner Hektoen: Are you serious, Mr. Rubenstein? Of course he has other things to do. That is part of your job to go around?

1476

The Witness: Yes, sir.

By Mr. Rubenstein:

Q. Now, maybe you will get a bit clearer. As soon as you were told by the first person you were going around—do you remember? A. I told you once. How many times do you want me to tell you? I have told you.

Mr. Rubenstein: Will you please ask the witness to answer, Mr. Examiner?

Trial Examiner Hektoen: If the answer is yes, just say so.

The Witness: Will you read the question to me?

Harry Lehair—For Respondent—Cross

1477

Trial Examiner Hektoen: Is there a question pending? Read it, Mr. Reporter.

(Record read.)

Trial Examiner Hektoen: The answer to that is yes. There is no question pending.

By Mr. Rubenstein:

Q. While you were going around you met the other people and they spoke to you; is that right? A. That's right.

Q. And then you came over to Mr. Kahler? A. That's correct.

1478

Q. And what did you do? A. I asked him what that button stood for.

Q. Why did you ask him what that button stood for? A. I thought I was entitled to an answer on what it was; just curious.

Q. You were just curious? A. That's right.

Q. Didn't your foreman, Fleassa, tell you not to inquire about union buttons during the early part of January? A. This was a steward's button.

Q. Did Mr. Fleassa, during January, differentiate between stewards' buttons and other buttons? A. I can differentiate for myself.

1479

Trial Examiner Hektoen: Will you answer the question? It was did Fleassa.

The Witness: No; Fleassa didn't differentiate to me.

By Mr. Rubenstein:

Q. Fleassa told you not to bother about union buttons; is that right? A. About the buttons they were wearing on the lapels of their shirts, small little buttons, he told us not to bother about them.

Q. And where was this steward's button worn? A. On his shirt.

Q. And you knew this steward's button was a union button, didn't you? A. That's right.

1480

Harry Lehair—For Respondent—Cross

Q. Now why did you feel it necessary to inquire about one kind of a union button when Mr. Fleassa told you not to interfere with wearing union buttons? A. Because I know the difference between a steward's button and a union button.

Q. Is a steward's button a non-union button?

Mr. Lumbard: The witness didn't say that.

The Witness: I don't get what he means.

By Mr. Rubenstein:

1481

Q. You say you know the difference between a steward's button and a union button, and I am asking you whether a steward's button is not a union button. A. Let me qualify my last statement, please.

Q. Qualify anything you want. A. O.K.

Q. But answer the question, will you, please?

The Witness: I don't know whether a steward's button is a non-union button or not.

By Mr. Rubenstein:

1482

Q. Don't you know that a steward's button is a union button? A. I know that particular steward's button also was a union button.

Q. Why did you find it necessary to go over and speak to Mr. Kahler about it when you were told a month before not to bother about union buttons? A. Because, as I said in the previous testimony, it was a steward's button, a union steward's button, which is a lot different from just a plain, ordinary union button.

Q. And you felt, because it was a steward's union button, you didn't have to ask Fleassa about it any more? A. Fleassa wasn't there to ask.

Q. And you went on your own initiative? A. That is correct.

Q. Didn't you feel that you were violating Mr. Fleassa's instructions? A. I did not.

Harry Lehair—For Respondent—Cross

1483

Q. By the way, what day was that? A. At the end of January.

Q. The end of January? A. I know when it is; the 26th.

Q. Now on that day did you know that Mr. Stone was fired?

Mr. Lumbard: On what day?

Mr. Rubenstein: The 26th, he testified.

Mr. Lumbard: Whether he knew on that day Stone was fired on that day, or had been fired?

Mr. Rubenstein: Know that Stone had been fired.

The Witness: No; I didn't know it. Wait a minute. When are you referring to, after 6 that night? 1484

By Mr. Rubenstein:

Q. On the 26th. A. It is a long day. What part of the day?

Trial Examiner Hektoen: When you went over to ask Mr. Kahler about it.

A. I didn't know it then.

By Mr. Rubenstein:

Q. Did you know at that time Mr. Katz had been fired? 1485

A. No; I didn't.

Q. You are sure of that? A. I am sure.

Q. Did Mr. Tomford, in his conversations with you, tell you that Mr. Stone and Mr. Katz had been fired? A. I don't remember their names, but I remember Mr. Tomford said that two fellows had been fired.

Q. Did he tell you why they were fired? A. He said they were fired—I am quoting him—is that all right?

Trial Examiner Hektoen: Certainly.

The Witness: He said they were fired for union activities.

1486

*Harry Lebair—For Respondent—Cross**By Mr. Rubenstein:*

Q. When did he say that? A. He said that prior to Kahler's release.

Q. So at that time you knew that two fellows were fired for union activities? A. No.

Mr. Lumbard: He hasn't said that and I object to the unnecessary remarks of counsel in implying something which hasn't been testified to.

Mr. Rubenstein: I am asking a question.

1487

Trial Examiner Hektoen: Will you read it, please? I thought it was all right.

(Record read.)

Trial Examiner Hektoen: That is what Tomford had told you?

The Witness: That is what Tomford had told me.

Mr. Lumbard: It is quite different from what the witness knew, your Honor.

Trial Examiner Hektoen: Very true.

The Witness: May I make a statement? Tomford is who told me the thing. How do I know what they were fired for?

1488

Trial Examiner Hektoen: Correct.

By Mr. Rubenstein:

Q. Tomford told you two people were fired for union activities? A. That's what Mr. Tomford told me.

Q. Right, perfect. And when you spoke to Kahler you already knew what Tomford had told you? A. When I spoke to Kahler?

Q. On the 26th? A. That was a couple of weeks later.

Q. When Mr. Katz asked you to join the union, what did you tell him? A. I told him that I didn't have any opinion one way or another and I would do what the rest of the fellows did; I would get on the band wagon.

Q. And you waited for the rest of the fellows, to get on the band wagon? A. No; I changed my opinion.

John Doglione—For Respondent—Direct

1489

Q. You changed your opinion? What is your opinion now? A. I still haven't any opinion.

Q. You have no opinion? A. I have no opinion at all.

Q. You wouldn't get on the bandwagon now? A. Sure, I would do just what the majority of the fellows wanted to do.

Q. So you haven't changed your opinion? A. He wanted me to sign a slip and I told him I wouldn't sign any slip. That is all he came over to me about, to have me sign a slip.

Q. Have you changed your opinion about the union now or haven't you? A. I haven't any opinions about the union to change. He came over to change my opinion. 1490

Mr. Rubenstein: All right; that is all.

Mr. Lumbard: That is all. Thank you, Mr. Lebair.

(Witness excused.)

JOHN DOGLIONE was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

Trial Examiner Hektoen: Your name, please?

The Witness: John Doglione.

Trial Examiner Hektoen: Your address?

The Witness: Huron Drive, Brightwaters. 1491

Direct examination by Mr. Whittlesey:

Q. Mr. Doglione, by whom are you employed at the present time? A. Republic Aviation.

Q. How long have you been employed by Republic? A. The early part of 1936.

Q. And in what capacity are you presently employed by Republic? A. Sectional supervisor.

Q. Sectional supervisor of what shop? A. Shop 10.

Q. How long have you been a sectional supervisor of shop 10? A. Oh, about 10 or 11 months.

1492

John Doglione—For Respondent—Direct

Q. Now, can you tell us what your duties as a sectional supervisor of shop 10 have been? A. My job mostly is to see that production gets out and maintains schedules and, well, allotting people to the work, whatever work has got to be done at that time.

Once in a while I take care of minor personal problems like when a person gets hurt. I find out how they got hurt and fix it so that no one else will get hurt; minor problems.

Q. Your main job is to see that the rate of production is kept up; is that right? A. That's right.

1493

Q. When you speak of personnel problems, is it one of your duties to hear grievances of any man in your shop? A. Well, if it is pertaining to his work or pertaining to he can't come to work or some difficulty arises, or something like that, I usually try to help them out. That is part of my job.

Q. Do you have to do with transfers of men from your department to other departments? A. Yes.

Q. Do you have to do with obtaining transfers from other departments of men to your department? A. Yes.

Q. That has to do with the production in the shop; right? A. That's right.

1494

Q. When I say transfers of men, does that also include loans of men from your department to other departments?

A. Yes, sir.

Q. Or getting other departments to loan men to your department? A. Yes.

Q. Now Mr. Doglione, during the time that you have been sectional supervisor in shop 10, have you ever had any occasion to deal with efforts or desires of the men under you to engage in solicitations of one kind or another of the other employees? A. Yes.

Q. Can you tell us of any instances of solicitations by the men that have come to your attention and with which you have dealt? A. Well, sometime around before Christ-

mas a man started to take up a collection for Christmas presents and stuff, and I put a stop to it. It only started about an hour, and then it was stopped right away.

Then one time one of the men in the shop got killed and the fellows started collecting money to buy a floral piece, and I stopped that and told them to go upstairs in the personnel department and turn the name in; that the personnel department would send flowers to all people who were hurt.

There was another instance when we had quite an argument over it. One of the men who worked in the shop was burned out. His house caught fire and he lost all his belongings, and the men in the shop started collecting for him, and I think they had somewhere around 10 dollars collected when I got wind of it and stopped it and we had quite an argument about that.

The men insisted on continuing because this man had lost all his belongings, and finally it wound up that we went up to the personnel and told him that the man had been burned out and they should take care of it from there.

Q. When you say "we had quite an argument", who was "we"? A. Men under me, supervisors and foremen. They came to my office when I put a stop to it. There were numerous others.

Q. Do you know whether at any time there ever was an attempt in your shop to start any kind of a benevolent fund? A. Oh, yes. They started that and I stopped it right away.

Q. When was that started, as far as you can recall? A. Well, it was during the month of December. I know it was before Christmas because one of the foremen, I think, was to be drafted that week. I think it was the first week in December that it was started and it was stopped right away.

Q. Now you speak of stopping the solicitation efforts. Was that because of any company rule with respect to

1498

John Doglione—For Respondent—Direct

solicitation that you knew of? A. Yes. It has been a company rule quite some time that there would be no solicitation at all in the factory or on the company ground of any kind.

Q. Do you know of any solicitations in your shop that have been permitted to continue? A. No; not in my shop, none at all.

Q. Is it your testimony that in all the cases where you have heard of solicitation efforts, you have directed them to be stopped? A. That's right.

1499 Q. And, so far as you know, they have been stopped? A. Yes.

Q. Have you ever had any incident where you have directed an employee to stop soliciting and he has continued to violate your directions? A. Only one. It was when this couple of men were soliciting for the fellow who got burned out. I gave the order in the morning, and then went on about my business and came back about 12 o'clock and found that they had not stopped, and I told the foreman if he didn't stop it right then and there he would be fired on the spot.

Q. Did he stop it then? A. He stopped it then.

1500 Q. Mr. Doglione, do you recall the time when one of the men in your shop appeared with a steward's button on his lapel? A. Yes.

Q. Prior to the time that you saw the man with a steward's button on his lapel, had you ever seen any other men in your shop or in the plant wearing any just plain C. I. O. buttons? A. Yes.

Q. How long before you had seen this man wearing a steward's button would you say that you had first noticed other men in the plant wearing plain C. I. O. buttons? A. Oh, I would say maybe two weeks, maybe three weeks, something like that.

Q. Were the men you noticed wearing C. I. O. buttons

John Doglione—For Respondent—Direct

1501

in your shop? A. There were some in my shop and some in other shops also.

Q. Do you happen to recall what other shops? A. I believe there were some in 40 shop; there were some in 01 shop; and I think there were some in the jig shop.

Q. Those weren't your shops, were they? A. No.

Q. How did you happen to observe them in other shops? A. Well, sometimes I am short of parts and have to go to the different departments that make these parts and walk through here and there. There was a few in the 40 shop. They were making a part for me that was a little behind. I happened to be talking to them to find out if I could transfer some men over to kind of push the job along. This one time I noticed them:

1502

Then in the angle shop we were short a spark lenses one day and I went down to find out why we were not getting them. There happened to be about four fellows there and I believe they were, I think they were, all wearing buttons. I know I spoke to two of them there and they claimed they were doing all they could. That is when I was going to transfer some men in there of mine.

Q. Did you ever speak or comment to these people wearing steward's buttons—excuse me, C. I. O. buttons—about the fact that they were doing so? A. I never did.

1503

Q. Have you ever reported to any superior about the fact you saw men wearing C. I. O. buttons around? A. No.

Q. Did you ever receive any instructions from any superior to report if you saw people wearing C. I. O. buttons? A. No.

Q. About how many men would you say during this period you noticed wearing C. I. O. buttons? A. Well, meaning my shop also?

Q. Let's take your shop first, and then take the rest of the plant. A. Well, in my shop, oh, maybe 10 or 15, something like that.

1504

John Doglione—For Respondent—Direct

Q. And in other parts of the plant? A. Well, I would say about 10 or 15 in other parts; besides mine, something like that.

Q. Have you ever noticed any women wearing C. I. O. buttons? A. No, I never did.

Q. Do you recall what those buttons looked like, Mr. Doglione? A. They were dark buttons. I don't know exactly the color. I know they were dark.

Q. When you say they were dark buttons, what part of them was dark? A. The background was dark.

1505

Q. You don't happen to remember what color? A. No; I think it was a green one.

Q. Did it have any lettering on it? A. I think it was dark green or dark blue, something like that.

Q. Do you recall what kind of lettering it may have had? A. The lettering on it was "C. I. O.". I don't remember what color it was. It didn't stand out very much.

Q. Were all the buttons you saw the same or were some different from each other? A. No; I seen all about the same, I believe.

1506

Q. You don't recall whether any of them had flags on them or anything of that sort, do you? A. I believe they did have a—no, the flags—some men were wearing other buttons, R. S. O. and stuff, and a lot of them had quite a few buttons on. No; I don't think I seen any flags on them, no.

Q. Of course, I am asking now before the time you saw this steward's button. After the time you saw this man with a steward's button did you then see other kinds of C. I. O. buttons, that you recall? A. I didn't pay much attention to them. I seen them; they didn't mean anything to me. I wasn't worried about them.

Q. Now, Mr. Doglione, are you aware that there was an employee in your shop named Robert Katz? A. Yes.

John Doglione—For Respondent—Direct

1507

Q. And do you recall that he was discharged from the plant on January 23rd? A. Yes; I do.

Q. Did you discharge him on that date? A. Yes.

Q. Now, prior to January 23rd had Katz ever been brought to your attention in any way that you can recall? A. Yes.

Q. Can you tell me how and under what circumstances he was brought to your attention? A. Well, I had seen him at different parts of the shop that he didn't belong.

Q. If you will fix the time you are talking about now it will be helpful. A. Well, somewhere around Christmas time there or a little after. It was somewhere around Christmas time.

1508

Q. 1942? A. Yes. I was in a little bit of a hole there with parts not coming out and walking around quite a lot.

Q. Tell me—excuse me for interrupting, but do you recall what section of your shop this man was working at this time, or supposed to be? A. No; I don't recall. I didn't know exactly when I seen him what section he was working on. I had to follow him from where he was at to find out exactly where he was working, who his foreman was.

Q. You found out? A. Yes; found out finally.

1509

Q. What section is that? A. That is miscellaneous section, making small bulkheads, and the smaller spars, and they make top decks and stuff like that. I had seen him in different parts of the shop with a yellow button on.

Q. What was the significance of the yellow button? A. The yellow button is the color of my shop, 10 shop.

Q. In other words, everybody in 10 shop has a button with a yellow background; is that it? A. Yes, sir.

Q. And people in other shops have different colored buttons? A. Green, blue, red.

Q. So that you can tell what shop a man belongs in when you see him; right? A. Yes.

1510

John Doglione—For Respondent—Direct

Q. You say this occasion you are talking about now occurred somewhere around Christmas time; right? A. Yes; somewhere around that time or right after that time; somewhere around Christmas time.

Q. Do you remember this particular day you are talking about now when you had this man brought to your attention? Was it in the morning or afternoon; do you remember? A. Well, it was in the morning on one occasion.

1511

Q. Let's take one occasion at a time. A. I had noticed him down at 01 shop, which is at the other end away from the section. I looked at him and thought it was funny, a man with a yellow button, what he was doing down there.

Q. What is the color of the buttons in 01 shop? A. Red. That time I went by and looked at him and didn't think anything of it, that he must want something down there.

So I went back to my office and continued on about my work.

Then in the afternoon again I happened to see this same—happened to see a yellow button on a fellow and looked up and seen it was the same fellow I had seen in the morning.

1512

Q. This time where did you see him? A. This time he was over in the 40 shop. I kind of wondered what he was doing there, and as soon as I seen him he ducked, and I followed him and found he was working in this miscellaneous section. I went over and asked the foreman what was it, why the man was out of his section, and told the foreman to speak to him, that he would have to stay on his own job.

Q. Who was the foreman? A. At that time there were two foremen. One was Lalenski, and the other one was Kowail.

Q. Now you are talking of the afternoon of this same day; is that right? Or just later on that same day? A. I think it was the afternoon, later on that same day, I seen him again. I asked the foreman why the man was away

John Doglione—For Respondent—Direct

1513

from his bench and the foreman didn't know. I told him I had seen him in other sections and I said, "You better talk to him."

So I walked away from him then, didn't bother with him any more.

Q. Does that complete that conversation? A. That is about all on that day.

Q. Now, you say you were having some difficulties with production in your shop at that time; or did you say that?

A. Yes. The trouble I had was in two sections of the shop. One of them was this miscellaneous section. Nothing was coming out of there. That is why I was more or less watching that section, to find out what was the matter.

1514

Q. You say nothing was coming out of there. You don't mean literally nothing? A. No; no work, no parts. A lot people working and no parts coming out the way they should. There would be one or two parts coming out and that was all.

Q. What do they do in the miscellaneous section? A. They assemble frames, that is, fuselage frames. They assemble a small spar, assemble spar 3 inboard and outboard, and they assemble part of the cockpit, the pilot's cockpit.

Trial Examiner Hektoen: And miscellaneous?

1515

The Witness: And miscellaneous, small bulk-heads.

By Mr. Whittlesey:

Q. How many employees approximately are there in that section of your shop? A. I think there is somewhere around 85.

Q. Is that one of your larger sections or one of your smaller sections? A. No; that is one of the smaller sections.

Q. You say you were having production difficulties in

1516

John Doglione—For Respondent—Direct

some other sections at that time? A. Yes; I had production difficulties in the rib section, but not too much in comparison with this section.

Q. Now, you have related all that occurred so far as this particular man was concerned on that day; is that right? A. Yes.

Q. Did you know the man's name at that time? A. No; I didn't know the man's name at that time.

Q. But you noticed him particularly that day in other parts of the shop than Section 10; is that right?

1517

Mr. Rose: Objection.

The Witness: Yes; that one day.

Trial Examiner Hektoen: What is the objection?

Mr. Rose: It is just adding to the testimony. I don't see the necessity of summarizing.

Trial Examiner Hektoen: I will note the objection without ruling on it.

By Mr. Whittlesey:

1518

Q. Now, Mr. Doglione, I believe you testified yesterday that you discharged Katz on January 23rd; is that right? A. That is right.

Q. Now did you sometime before January 23rd have occasion to request his release? A. Yes.

Q. Do you remember the reason that you gave for requesting his release at this prior time? A. Lazy and non-cooperative.

Q. I see.

Mr. Rubenstein: Repeat the answer, please.

(Answer read.)

By Mr. Whittlesey:

Q. I believe you also testified that sometime either a little before or a little after Christmas, this matter was

John Doglione—For Respondent—Direct

1519

brought to your attention, in connection with his moving around the shop. Is that correct? A. That is correct.

Q. Now can you tell us, and if so I wish you would tell us, starting with this time around Christmas what occurrences transpired that led up to your requesting the release of Katz for the reasons that you have stated? A. Well, sometime after Christmas there, why, we were in a bit of a hole, and we were kind of rushing everything trying to get parts out, and I noticed this man in different parts of the shop, where he did not belong.

Finally one day I followed him to find out where he really worked, and I found out—

1520

Mr. Rose: Will you speak a little louder please, Mr. Doglione?

The Witness: And I found out he worked in the miscellaneous section. So that I spoke to the foreman about it, and told him to warn him that he was not to walk around as he had.

A few days later I noticed him again in a different shop, and this time I walked up to the foreman again and I said, "What is that man working on?"

And he told me he was working on a frame, and I again told the foreman that he had been walking around the shop.

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I think it was in the middle of the week when I was pretty well rushed on this one frame, and I was talking to the foreman about it, and I asked him who was working on it, and he said he had a man working on it, and I looked around and there was nobody on the job.

I said, "Where is he?"

He said, "He must be there. He was there a little while ago."

I guess I turned around a little bit, and presently this man came over and started working on the job,

1522

John Doglione—For Respondent—Direct

and then I noticed he was the same man I had seen walking around different parts of the shop.

I said, "Is he working on it?"

And he said, "Yes."

I said to the foreman, "I think you better put another man on the job, because that man does not produce very much."

I think he put a girl on the job, or two girls, or something like that and, oh, then a few days later I had seen him in the morning—

1523

Q. By "him" who do you mean? A. I seen this fellow in the morning in another part of the shop where he did not belong, and I walked up to the place where he was supposed to be working, and I think I asked the foreman how many he had turned out on that particular job, because that job was holding up the whole production line at that time—

Q. Did you say this was in the morning? A. I believe it was—yes, sir. Yes, it was in the morning. I think this morning here I spoke to the foreman this time, and the foreman said to me, "I can't seem to get no work, no parts or anything for that fellow."

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I believe I spoke to this man. I walked in and I asked him what he was waiting for, or something like that, and he told me that he had no parts, and I spoke to the foreman, if that was true, that he had no parts, and the foreman I believe said he had some, but he was short a few pieces, and I told the foreman to push the job up and find out what was wrong, and then walked away.

A little while after dinner, I believe it was—

Q. Do you mean after lunch? A. After lunch, yes sir,—(continuing)—I came back to that section again—or was it before lunch; something like that; right around that time, and it was not long after I spoke to him. I came back to

John Doglione—For Respondent—Direct

1525

that section again, and again the job was stopped. This time I asked him if anybody was on that job.

Q. When you say "him" who do you mean? A. The foreman.

Q. I see. A. He looked around and he said he didn't know. So a little later, about 10 minutes or so, the people working on the job, two were standing around waiting for this one man, and he was supposed to be the man who run the job or done the work, and he came along—

Q. This man was who? A. Robert Katz. And I asked the foreman where he had been. I said to the foreman, "You better go in and tell that fellow I am sick and tired of him walking around. Either he gets on the job or you will have to let him go."

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Then I started to walk away.

Mr. Rubenstein: Can we have the time a bit more clear as to when this occurred?

Mr. Whittlesey: He said sometime around the middle of the month.

Mr. Rubenstein: What month?

Mr. Whittlesey: January.

Mr. Rubenstein: January?

The Witness: Sometime around the middle.

1527

Then the foreman walked in and talked to the man, and an argument started, and it looked like the man was arguing with the foreman, and I started to walk away, and I turned around and I seen the argument going on, and I walked back and stood nearby and heard part of the argument, and I said, "What's the matter?"

This man Katz started telling me that the foreman was picking on him, and he had no parts, and he was doing the best he could and working.

I again reminded the man I had seen him walk around the shop where he did not belong. He wanted

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John Doglione—For Respondent—Direct

to know when. So I told him about one time he was down in crib No. B, where he did not belong, and he said he had to go there to get tools.

I said, "What is wrong with your tool crib here?"

Then I again reminded him that I had been waiting there for a little while and he was not there, and he said he had gone to the toilet. He said, "I am allowed to go there?"

And I said, "Don't be funny."

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Then one word led to another and I said to him, "It looks like you don't want to work here."

I asked him how many he had made that morning, and he said one or one and a half.

By Mr. Whittlesey:

Q. Are you talking of frames now? A. Yes, frames.

Finally, he got very boisterous, and I said to him, "I guess you don't want to work here anyway," and he passed some remark and I said, "If that is the way you feel about it, you are through. Pack your tools and get out of here."

He said, "Right now?"

1530

And I said, "Right now."

Q. Was that the end of that conversation? A. I walked away from him then.

Q. You spoke about first noticing this man around Christmas time sometime. Is that right? A. Yes. No, I believe it was after Christmas, when he was in that section, because before Christmas he was in the spar section, I believe, and he asked for a raise about that time.

Q. At the time when he was first called to your attention, did you know the man's name? A. No, sir, I didn't know his name.

Q. At the time you told him he was fired, did you know his name? A. Yes.

John Doglione—For Respondent—Direct

1531

Q. How had you come to learn his name in the interim? Do you recall? A. I believe it was a few days before he was fired that I was asking the supervisor who was working on that job.

Q. Yes? A. It was quite hot that day and he told me a fellow by the name of Robert Katz, and I think he pointed him out to me.

Q. I was standing in the middle of the aisle when I asked him "Who is working on the frame?"

And he told me a fellow by the name of Katz and three or four others, and he mentioned one of the girls' name, and just about that time he said, "That's the fellow working on that frame."

1532

Q. That was the man who you had noticed around Christmas time? Is that right? A. That is right, and I told the supervisor to put another man on it.

Q. I believe you said yesterday that you had been having some general difficulties in getting the production out in that section of the shop; is that right? A. That is right.

Q. You don't mean to indicate by your testimony, do you, that Katz was the only person in that shop who was not seeming to be working? A. Oh, no.

Q. There were others? A. Oh, yes. I fired one man a few days before that in that same section.

1533

Q. For what reason? A. Not working.

Q. Do you have any idea—withdrawn.

You say you fired one man. Did you fire any others at about this time for not working? A. Yes. I fired quite a few.

Q. Have you any idea how many during December and January you had occasion to discharge for not working in that shop? A. In the whole shop No. 10?

Q. Yes.

Mr. Rose: I object to that as immaterial.

Mr. Whittlesey: I think it has some bearing upon

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John Doglione—For Respondent—Direct

whether this man was singled out or not, and if he was just one of many cases—

Trial Examiner Hektoen: If that is the point, you may proceed.

Mr. Whittlesey: Will you answer?

Trial Examiner Hektoen: How many?

The Witness: Somewhere between 20 and 25.

By Mr. Whittlesey:

1535

Q. Now at the time that you discharged this man, as you have related, were you aware that you had previously approved an increase in his wages? A. Yes, I was aware of the fact, and I also spoke to him about it.

Q. How did you become aware of it? A. I believe when I called my supervisor down about work in the section, he reminded me and he said he could not understand why the sudden stoppage.

Q. Yes. A. That he had just O. K.'d a raise for, I believe he said, about four people in that section.

Q. Including Katz? A. And one of them was Mr. Katz.

Q. You must approve the raise yourself, must you not? A. Yes. If he got it, I must have approved it.

1536

Q. Tell me how raises are generally put through for the men. Where does it start, with the foreman, supervisor or what? A. The foreman recommends or makes a request to the supervisor, and the supervisor checks it and turns it in to me, and I usually sign them and turn them through to the superintendent.

Q. Now, how long after the time that you approve a raise, does it normally take effect? Do you know? A. It has got to be over two weeks.

Q. I see. A. Most of the time, three weeks.

Q. Now if the raise for Katz were to have gone into effect on January 2nd, when would that mean that you had in normal operation approved the original request for the raise? A. About the middle of December.

Q. Now going back to your conversation on this day when you discharged this man, what did you do after you told him that he was fired? A. Well, I went down to my office and wrote out a release, or requested a release, and told the girl to push it through, and that is all.

Q. What did you, yourself do after that? A. I left the office for a while.

Q. You did return then, didn't you? A. I came back later in the afternoon.

Q. After you got back, did you receive any word as to what, if anything, had happened to the request for a release? A. Yes. I came back and my girl, or my clerk, told me that the release which I had put through for Mr. Katz had been cancelled.

1538

Q. You mean the request for a release? A. The request for a release had been cancelled by Mr. Lasker, and I asked her why, and she said she didn't know.

Q. What did you do after that? A. I called Mr. Bruno, and he told me that Mr. Lasker had cancelled it, due to the fact that the man had been with the company quite a while, and he had promised to stay on the job and do the most he could.

Q. Yes. A. And would I give him another chance. I said, "If you want to, you are the boss."

1539

Q. Now on these requests for release, Mr. Doglione, you say you sent the request up to Lasker's office? Is that right? A. That is right.

Q. Now is the request which goes up any particular color, that is, that form? A. It is a pink copy, a salmon copy.

Q. That is the original is? A. The original is.

Q. Is it a copy which you made in your office? A. Yes.

Q. There is a copy made there? A. Yes.

Q. What color is it? A. The green copy stays in my office.

1540

John Doglione—For Respondent—Direct

Q. So that when you made out this request, in normal course you would have kept a green copy in your office? Right? A. That is right.

Q. Do you keep those green copies permanently? A. No.

Q. I am asking you now about your regular office routine. A. No, when a release goes up, the green copy stays in my office for a period of about 30 days.

Q. Then what happens to it? A. Then the clerk destroys them.

1541

Q. Is that the routine of your particular office? A. That is right. It is the routine of all the offices.

Q. But you know only about your office? A. I know about my own office, and I do that.

Q. Was this green copy put through that routine? A. Yes.

Q. So that that green copy is no longer in existence; is that correct? A. No.

Q. Now the day after your request for Katz's release, and he had been reinstated, did you have occasion to have a talk with Mr. Lasker? A. Yes.

Q. Where did that talk take place? A. It was at a production meeting that evening.

1542

Q. About what time? A. Oh, around six o'clock.

Q. Is a production meeting a routine meeting? A. Yes, we have them about every third or fourth day.

Q. I see. Where was this meeting held, Mr. Doglione? A. In Mr. Lasker's office.

Q. Did Mr. Lasker say anything to you about Katz on that day? Do you recall?

Mr. Rubenstein: I object to that, as to what Lasker told him as irrelevant and immaterial.

Trial Examiner Hektoen: I think it is part of the picture. He may answer.

John Doglione—For Respondent—Direct

1543

By Mr. Whittlesey:

Q. Do you want the question? A. Yes.

Mr. Whittlesey: Repeat the question, please, Mr. Reporter.

(Question read.)

The Witness: Yes, he said something.

By Mr. Whittlesey:

Q. What did he say?

1544

Mr. Rubenstein: Same objection.

Trial Examiner Hektoen: He may answer.

The Witness: We had started the meeting, and he said, "By the way, when someone wants to come up to the office, it is customary for them to get permission from your office."

I said, "That's right."

He said to me, "How come Mr. Katz came up to see me this morning without any ticket or no permission or nothing, and passed Bruno's office and passed MacDonald's office and got into my office, and still he had no permission?"

1545

I said I didn't know nothing about that; it was news to me, and he proceeded to bawl me out about it, and he told me to make sure that the supervisors and foremen understand the routine that the men had to go through, if they wanted to go higher than myself.

By Mr. Whittlesey:

Q. Did you speak to Mr. Katz about that that day?

A. No, I couldn't.

Q. Why not? A. Well, by the time I got out of the production meeting it was too late.

1546

John Doglione—For Respondent—Direct

Q. Did you have a talk with Katz the following day?
A. Yes, I did.

Q. Do you have any recollection about what time it was? A. I believe it was in the morning, close to 12 o'clock.

Q. Where did that talk take place? Do you remember?
A. It took place in my office.

Q. Did you call Katz in? A. Yes. I believe I walked by his section, and I happened to see him, and I said, "By the way, I want to talk to you", and I told the supervisor to send him down to my office.

1547

Q. Can you tell us what took place at that talk? A. Well, when Mr. Katz came in I told him to sit down and I asked him how his job was going along, and he said all right, and I told him I didn't think it was all right.

Then I asked him why he went up to see Mr. Lasker without my permission, and he said he had gotten permission from the supervisor, and I said to him, "Well, I didn't give you permission," and he said he got it from Mr. Bondy.

Q. Was that his supervisor? A. That was his supervisor, yes, sir.

I said, "Didn't Mr. Bondy tell you to come and get permission from me?" (And then he evaded the issue.

1548

Mr. Rose: I object to that, "he evaded" and I move to strike.

Trial Examiner Hektoen: Tell us what he said, Mr. Doglione.

The Witness: He started to talk about what he wanted to see Mr. Lasker about, and I bawled him out and I said, "Why didn't you get permission from me?"

And he said he didn't know, and kept talking about other things, and finally I told him the procedure that he had to go through, in case he wanted to go any higher than me, and I reminded him that he knew that when he first came in the plant.

John Doglione—For Respondent—Direct

1549

Then I asked him why he wanted to see Mr. Lasker, and he said he wanted to see him about some grievances of some kind, and I asked him what the grievances were, because I usually took care of the grievances in my own department myself.

He said it was too big for me to handle, and he was not interested in talking to me.

I asked him, "Well, why? We have talked together other times, and why this time not?" And he went on to tell me about some grievance of a girl working on a job, which was too heavy for her, and I told him—he started talking about other people's troubles, and I reminded him that I was not interested in any other people's troubles but his own, and if he had any grievances, I would try to straighten up his grievances, but so far as other people's grievances, they were to come and see me themselves.

1550

By Mr. Whittlesey:

Q. Do you recall whether or not he had a steward's button on at the time of this talk? A. Yes, he did.

Q. Do you recall whether he made any mention of it at this time? A. I think he did make mention of it, claiming that we were hounding him on account of that button.

1551

Q. Was this the first day on which you saw a steward's button on Katz? A. I believe it was.

Q. Now you were talking about this discussion with respect to grievances. Was that the end of it, or did you have some further discussion? A. Yes, we had further discussion.

Q. Tell us about it. A. He finally told me about a grievance of his own.

Q. What was that? A. That he had not been notified early enough to work Sunday. I asked him when he had been notified, and he said he had been notified Friday. Then

1552

John Doglione—For Respondent—Direct

I said—oh, he asked me when he was supposed to be notified, and I said he was supposed to be notified Thursday morning.

Q. Yes? A. And he mentioned that he had not been notified until Friday, about noon. So I said to him, "That's funny, your foreman knows on Thursday."

So I said to him—oh, before I left the office, I again told him that if he wanted to go to see the president he could do so, but I told him the routine that he had to go by, and he said he understood perfectly and that he would comply with it from then on.

1553

I then walked out into the shop with him, and I said, "Let's go out and talk to the foreman", and I went out with Mr. Katz and picked up his foreman, and I asked him when he was notified about the people working Sunday, and the foreman said he was usually notified on Thursday.

I said, "When do you tell the people who are working under you"; and he said "Friday, usually."

I said, "Have you ever told them later than Friday morning"? And the foreman said in a few cases, yes, he had.

1554

And I asked him when he had told Mr. Katz, but he said he had not told him yet but had told his partner to work Sunday.

I looked at Mr. Katz and I said, "You will be notified Friday morning."

Then Mr. Katz said, "That's all right."

Q. Do you recall whether Mr. Bruno came into this talk at all? A. Yes. While I was talking to Mr. Katz, Mr. Bruno came along.

Q. In your office there? A. No, on the floor.

Q. Do you recall anything else about it? A. And Mr. Bruno stopped and said, "What's the matter?"

And I explained to him that Mr. Katz was arguing because he had not been notified to work earlier in the day.

Then Mr. Bruno said, "When were you notified?" and Mr. Katz said, "Somewhere around noon time, or in the afternoon or something like that that."

Q. You are talking about notifying on Friday for Sunday work; is that right? A. That is right.

Q. Was this day a Friday? A. Yes, this day was a Friday.

Q. Does that have any connection with the question of Friday notification? A. Yes.

Q. Do you recall whether Mr. Katz at any time ever showed you a handbill saying something about grievances on it? A. I don't know whether it said anything about grievances on it, but he showed me a card or some kind.

1556

Q. Do you remember when that was? A. It was in my office, in one of the talks I had with him.

Q. Was it after your first discharge of him, or before that time? A. It was after I discharged him.

Q. After you first discharged him? A. Yes, sir.

Q. Do you recall ever having asked Otto Bofinger, section supervisor of the fuselage shop during January to loan you a couple of men? A. Yes. I do that quite often.

Q. Do you recall him bringing over a couple of men one morning in January, and you having taken one and not taken the other? A. Yes.

1557

Q. Do you recall that the man that you did not take was wearing a steward's button? A. Yes, I believe I do.

Q. Now, was that the same morning that you had this talk which you have last told us about with Mr. Katz; or some other morning? A. I believe it was the day I talked to Katz.

Q. About this Friday notification? A. Yes.

Q. Do you know when it was, or about what time in the morning it was, that Bofinger brought these men over on this occasion? A. The first thing in the morning.

1558

John Doghione—For Respondent—Direct

Q. Now you say that on this morning that you had Katz in your office, and there was this discussion of grievances, he was wearing a steward's button? Is that right? A. Yes.

Q. Did he continue to wear that button? A. Yes.

Q. Do you know whether subsequently there was any discussion with regard to the button between Mr. Katz, Mr. Lasker and Mr. Kress? A. Yes.

Q. Were you present at that talk? A. I was.

1559 Q. Was Katz at that time requested to do anything about that button? A. Yes.

Q. What was that?

Mr. Rubenstein: May I make a suggestion? This has been gone into before in other cases. Are you going into all this?

Mr. Whittlesey: I am not going into it in detail.
Trial Examiner Hektoen: Proceed.

Mr. Whittlesey: Read the question, please, Mr. Reporter.

(Question read.)

1560

The Witness: He was told to take it off. Do you want the conversation?

By Mr. Whittlesey:

Q. I do not think we need the conversation now. Will you tell me what happened after that, after this discussion in which you told him to take his button off? A. We walked back in the shop.

Q. "We" is who? A. Mr. Katz and I.

Q. Yes. A. Well, on the way down to the shop, just before we left the office, I asked Mr. Katz, did he understand fully what was said up in the other office, and he said yes.

John Doglione—For Respondent—Direct

1561

I said to him, "Well, you are still wearing it".

Q. Meaning the steward's button? A. Yes, and so he said, "It is just force of habit."

I said, "Well, we understand each other?"

And he said, "Yes", and he took it off and he went back to the shop and went to work.

Q. This was in the morning or in the afternoon? A. This was in the afternoon.

Q. All right. Now— A. Yes, in the afternoon.

Q. That was the end of your talk with Katz that day? Is that right? A. Yes.

1562

Q. Do you know whether you had any discussion with him about unions at that time, or at some other time? A. I had a discussion with him about it, but I don't recall whether it was that time or not.

Q. Now what happened the following day? A. The following day I come down to the shop and looked around, and happened to walk by his section, and he said "Hello" to me and I said "Hello", and started to walk by, and I noticed his button on again.

Q. Do you mean steward's button? A. Steward's button. So I walked up to him and I said "It looks like you are trying to make it hard for yourself".

1563

He said, "I had my orders."

I said, "You know the consequences?"

I said, "You might as well pack your tools."

He said, "Right now?"

And I looked at my watch and I said, "Well, you spent the time traveling out here. You might as well work until 4:30."

I then went in and made out a request for a release and sent it up to Mr. Easker's office, and went on about my business the rest of the day until in the afternoon the release came down, and I went to him and said, "Here is your release. Good bye and good luck."

1564

John Doglione—For Respondent—Direct

Q. About what time was that? A. About three, I guess, or close to three o'clock.

Q. Did you have any talk about unions at that time?

A. Yes, I had a talk with him.

Q. How did that talk start and what was said? A. Well, he said that I had received orders to release him, and I said, "You heard the consequences yesterday and you agreed to them", and he started to tell me that his lawyer had told him that he could wear a steward's button in the shop, and I said, "Well, that is your opinion."

1565 Then he claimed that I was hounding him, and the foremen were hounding him because he was a union member.

I said, "No. I don't see why you should say that, because I was a union member myself."

Q. Do you recall saying anything to him at that time about your having belonged to a union, and a fellow had run off with your money, and you were still looking for him? A. Yes, I believe I did.

Q. You think it was at this time or some other time?

A. I am not sure whether it was at that time I told him that or not, but I think it was. It might have been the day before, but I don't know.

1566 Q. Have you got any prejudice against unions, Mr. Doglione? A. No.

Mr. Rose: Objected to, and move to strike.

Mr. Rubenstein: I join in the objection.

Mr. Whittlesey: I think the question was raised in the testimony.

Mr. Rubenstein: You raised the question.

Mr. Whittlesey: I think you brought it up in the testimony first.

Trial Examiner Hektoen: The answer may stand.

John Doglione—For Respondent—Direct

1567

By Mr. Whittlesey:

Q. Now, Mr. Doglione, Mr. Katz has testified that in this talk which you had with him, when you finally discharged him, that you said he had been a good worker, a good man and a good mechanic.

Do you recall saying anything like that to him at the time? A. No, I didn't say he was a good worker. I told him that he could be a good worker if he made his mind up to it.

Q. At one time he had been a good worker, had he not?

A. At one time, he was.

1568

Q. Mr. Katz also testified that on the day he was first discharged, or requested to be released, you said to him: "Look what you are doing, going around agitating and causing a lot of trouble."

Do you recall whether you said that to him, either at the time you discharged him first or at any other time? A. No, I don't recall it.

Q. Mr. Katz also said—

Mr. Rose: What page are you reading from?

Mr. Whittlesey: I beg your pardon. Page 174.

By Mr. Whittlesey:

1569

Q. Mr. Katz also said that on January 15th you said to him, "I am warning you, if you step out of line I'll fire you on the spot. You can pass that out and tell it to the rest of your union boys."

Do you recall having said anything of that kind to him on January 15th? A. No, not in that manner.

Q. What do you have in mind?

Mr. Rubenstein: May I call the attention of counsel to the fact that that referred to Lasker?

Mr. Whittlesey: Let us check it up.

1570

John Doglione—For Respondent—Cross

Trial Examiner Hektoen: That refers to this witness.

Mr. Rubenstein: It does refer to this witness?

Trial Examiner Hektoen: Yes.

Mr. Whittlesey: Read the question, Mr. Reporter, please.

(Question read.)

Trial Examiner Hektoen: You may answer.

1571

The Witness: I told him when he asked me about grievances and was telling me about other people's grievances, I told him to go out and tell the people that had told him the grievances, that he could pass the information on to them that they were to come down and give me their grievances themselves.

By Mr. Whittlesey:

Q. I see. A. And not through him.

—Mr. Whittlesey: You may question.

Cross examination by Mr. Rose:

1572

Q. Referring to the day when Katz was actually released, and you say you saw him wearing a steward's button, and you looked at your watch——

Mr. Whittlesey: Do you mean request for a release or the release?

Trial Examiner Hektoen: The question of the release and the watch came a little bit later, did it not, Mr. Rose?

Mr. Rose: I will withdraw the question.

By Mr. Rose:

Q. On the day you finally discharged Katz for wearing the steward's button, you say you saw him wearing the button? Is that right? A. That is right.

John Doglione—For Respondent—Cross.

1573

Q. And you looked at your watch at the time you saw him? A. No.

Q. Do you remember the day on which he was discharged finally? A. Yes.

Q. What was that date, so far as you can recall? A. The 23rd of January.

Q. 1943? A. 1943.

Q. At what time did you see him wear the button on that day? A. It was in the morning sometime. The exact time I don't know. I didn't pay much attention to it.

Q. What was that paper which you pulled out of your pocket? A. That is his release slip.

1574

Q. Is that the green copy of the release slip? A. That is right.

Q. Do you have any objection to my looking at it?

Trial Examiner Hektoen: You may, inasmuch as the witness referred to it.

The Witness: (Producing document and handing to counsel for the Board.)

Mr. Rose: Thank you.

By Mr. Rose:

Q. When you referred to some rules which you have as to what an employee must do, or what regulations he must follow if he wants to see, say, the factory manager, Mr. Lasker, did he have to get permission from his lead man? A. He gets permission from his lead man, yes.

1575

Q. Does he need anyone else's permission? A. He needs the foreman's permission, the supervisor's permission, my permission, the superintendent's permission, and the general superintendent's permission, up to Mr. Lasker.

Q. He is not supposed to see Mr. Lasker until he gets all those approvals; is that right? A. That is right.

1576

John Doglione—For Respondent—Cross

Q. And that applies to other company officials above your rank? Is that right? A. Yes.

Q. If a man wants to see you, does he have to get the permission of the supervisory people below you? A. A working man?

Q. Yes. A. Yes.

Q. Does he go to his lead man for permission, first, then to his foreman, and then his supervisor, and if they all give him permission, he comes to you? Is that right?

A. That is right.

1577

Q. Do you have any recollection as to when Mr. Katz came into your department? A. Sometime in the middle of the summer, I believe.

Q. What year? A. 1942, I believe.

Q. Now you referred to an occasion, or rather the first occasion when you made out a release for Mr. Katz. Do you recall when that occurred? A. When?

Q. Yes, can you fix the time?

Mr. Whittlesey: Do you mean the time of day or the date?

Mr. Rose: No, the date.

The Witness: The date?

1578

By Mr. Rose:

Q. Yes, sir. A. I am not quite positive of the date.

Q. What is your best recollection? A. It was the same day he was reinstated. It was somewhere around the middle of the month, I believe. I don't know the exact date. I can't say.

Q. Can you give us any approximation?

Mr. Lumbard: He said he does not know the exact date, your Honor.

The Witness: No, I don't.

John Doglione—For Respondent—Cross

1579

Trial Examiner Hektoen: He has already given us an approximation, which was the middle of the month.

By Mr. Rose:

Q. You also referred to some series of conversations that you had with a foreman with respect to Katz. Who was that foreman? A. Zilensky, a few times, and Kowall also.

Q. When, to the best of your recollection, did those talks take place? A. Around the beginning of the first week in January, I believe. He had not received his pay yet. He hadn't received his pay—

1580

Trial Examiner Hektoen: Do you mean the increase?

The Witness: I mean the increase.

By Mr. Rose:

Q. It was prior to the time he received his pay increase? Is that right? A. Yes, but the pay increase had been in already. He had not been told.

Q. Do you mean that the pay increase had been approved by yourself and then submitted to the other officials for approval? Is that what you mean? A. Yes, sir.

1581

Q. Do you know when he did actually get his pay increase? A. It was effective the second of January, and you don't get it for two weeks.

Q. So that he did not actually get it until approximately two weeks after the 2nd of January; is that right? A. Yes, sir.

Q. When, so far as you can recall, had you actually made the recommendation for the pay increase? A. I make recommendations for the pay increase in the beginning of the week.

1582

John Doglione—For Respondent—Cross

Q. I am talking with respect to this particular instance. Do you recall when you made the recommendation in connection with Katz for the pay increase? A. No, I don't. I don't look at names.

Q. Well, when the pay increase was finally approved, it was retroactive to the 2nd of January; is that correct?

A. What do you mean by "retroactive"?

Q. I will withdraw the question.

● When the pay increase finally appeared in his envelope, he was given the increase as of the early part of January?

1583

A. His pay starts for the week of January 2nd. He don't get paid for that week until two weeks later.

Q. You are talking about the increase? A. That is right.

Q. You mean it takes about two weeks for the increase to finally clear through the other officials? Is that right?

A. Yes.

Q. But when he finally gets it, does he get it as of about the time it was first recommended? A. Oh, no.

Q. Do you pick an arbitrary period? A. If I O. K. the increase to take effect January 2nd—

1584

Q. Yes. A. (Continuing): —that means I O. K. the increase about December 5th or 6th, which is a period of about three weeks before it even becomes effective. Then he don't get it for two more weeks, he don't get it in his pay unless somebody tells him, "You got a raise, an increase as of January 2nd."

Q. I don't understand. What happened between December 5 and January 2nd, let us say? Does it take that time for you to approve it? A. No, I approve it and it goes upstairs for the rest of the officials to approve it!

Q. Why did the pay increase go back for two weeks?

Mr. Whittlesey: What do you mean, go back for two weeks? I do not believe it is clear to the witness.

John Doglione—For Respondent—Cross

1585

Mr. Rose: I am trying to make it as simple as I can.

Mr. Whittlesey: I appreciate that.

The Witness: What do you mean, go back?

Mr. Rose: I withdraw the question.

By Mr. Rose:

Q. As I understand it, the increase appeared in Katz's envelope about two weeks after the beginning of January?

A. That is right.

Q. Does it start as of that two weeks? A. No, it starts January 2nd.

Q. But he does not get it until two weeks after that?

A. That is right, he does not get it in his envelope.

Q. Why does it start as of January 2nd? A. Because that is the week that I designated for it to start.

Q. That is the week you say it should start? Is that right? A. That is right.

Q. Is that the same as making your recommendation?

A. The same as making my recommendation. I recommend him for the raise, to start on the 2nd of January.

Q. I see what you mean. A. Yes, sir.

Mr. Rose: I have nothing further.

1587

Mr. Whittlesey: Are you through with your questioning?

Mr. Rose: Yes, sir.

Mr. Whittlesey: I was wondering if we might have a short recess, in view of the length of Mr. Rubenstein's cross examination, unless he has a very short cross examination at this time.

Trial Examiner Hektoen: If you want a recess at this time, it can be arranged. We will be in recess for five minutes.

(Recess taken.)

1588

John Doglione—For Respondent—Cross

Trial Examiner Hektoen: All right, Mr. Rubenstein.

By Mr. Rubenstein:

Q. Mr. Doglione, do you remember when Mr. Katz was first transferred to your department? A. Sometime around the middle of the year, in the summer time.

Q. In the summer time? A. Yes.

Q. Do you remember the month? A. No, not exactly. I believe the record will show it.

1589

Q. Suppose I show you Board's Exhibit 3-A. Will that tell you when Mr. Katz was transferred to your department? A. Yes.

Q. When? A. The 6th of June.

Q. June 6th? A. Yes, sir.

Q. Of 1942? A. Yes.

Q. And since June 6, 1942 he was working in your department? A. Yes.

Q. Until his discharge? Is that right? A. Yes, sir.

Q. And you say he wore a yellow button? A. That is right.

Q. And the yellow designated what? A. 10 shop.

1590

Q. And he was in 10 shop? A. Yes.

Q. Then you testified that you checked on what he was doing, and you found that he was in the miscellaneous department. Is that right? A. That is right.

Q. Can you tell us what the miscellaneous section or department is?

Trial Examiner Hektoen: We went into that at some length yesterday, Mr. Rubenstein.

Mr. Rubenstein: I would like to go over that, your Honor, to see what happened.

Trial Examiner Hektoen: All right, go ahead.

The Witness: Miscellaneous is small parts, small spars, small frames, fuselage frames, and part of the cockpit, the pilot's cockpit and tail frames.

By Mr. Rubenstein:

Q. And is there a miscellaneous section in each department, or only in your shop? A. No, there is a miscellaneous section in each department.

Q. In each department? A. Yes, sir.

Q. Did you check and find out what were the duties of Mr. Katz in the miscellaneous section?

Mr. Whittlesey: When?

The Witness: When?

By Mr. Rubenstein:

Q. During the time that he worked there? A. No, I never checked them until I found him wandering around the shop.

Q. You never knew what he was doing? Is that right?

A. What time do you mean that I never knew?

Q. During any time—strike that.

Until you checked on his work specifically, did you know what his duties were? A. Yes.

Q. What were his duties? A. Mechanic, helper and assembler.

Q. In the miscellaneous section? A. He was a helper and assembler in the rudder section, in the elevator section for a while and was taken and put in the spar section, and was taken and put in the miscellaneous section.

Q. Well, I am talking about the miscellaneous section, Mr. Doglione. When was Mr. Katz put in the miscellaneous section? A. I believe it was right around Christmas time.

Q. Around Christmas time? A. I think it was somewhere around Christmas time.

Q. Until then he was working in different departments in your shop? Is that it? A. Different sections, yes.

Q. And around Christmas time he was transferred to the miscellaneous section; is that right? A. He was put in the miscellaneous section. I believe that is right.

1594

John Doglione—For Respondent—Cross

Q. I see. A. The exact date, I am not positive about.

Q. You say that around Christmas time was the first time you noticed him in a different shop? A. Somewhere around that time, yes, sir.

Q. Until then did you have any reports about his abilities and his work? A. Yes. That is why he was put in a different section.

Q. When was that? A. I am not positive, but I think it was right after Christmas.

Q. Right after Christmas? A. Yes, sir.

1595

Q. But you put him in a different section, you say, just before Christmas or around Christmas? A. Around Christmas.

Q. Where did you see him, as you said, right after Christmas, which you thought was not his shop? A. I seen him in 01 shop.

Q. How far is 01 shop from 10 shop, where you say he was supposed to be? A. Well, you can say 100 feet and you can also say 500 feet.

Q. How can you say 100 and 500 feet? A. 10 shop ends here and 01 shop starts across the aisle (indicating), and also 10 shop starts 500 feet away, at the end of 01 shop, and 10 shop is down here (indicating).

1596

Q. Let me ask you this, Mr. Doglione:

In the miscellaneous section what were the exact duties of Mr. Katz? A. He was to assemble parts.

Q. He was to assemble parts? A. Yes, sir.

Q. You testified that at some time there was a shortage of parts; is that correct? A. That is right.

Q. Now on such an occasion would an assembler of parts be allowed to see whether or not there are parts in the next department to fill his job? A. Do you mean for his particular job?

Q. Yes. A. No; he was to go to his foreman or lead man and tell him that he has not got the part.

Q. And at no time could a man go there to check on

parts? A. Not unless he had the permission of his foreman.

Q. Was that all the time? A. All the time.

Q. Was it part of Mr. Katz's duties to do anodizing?

A. No.

Q. Did he have anything to do with the anodizing department? A. No.

Q. Do not some parts have to be anodized and treated before being used? A. Yes, plenty of them.

Q. And in order to have those parts anodized and treated, you had to bring them to the anodizing department; is that right? A. Yes, they had to be taken to the anodizing department.

Q. They had to be? A. Yes.

Q. So the employees in charge of small parts in the miscellaneous section sometimes did have to have parts anodized and treated? A. Not the employees.

Q. Who does that? A. Rush and control.

Q. What does an employee do if he needs a part to be anodized? Does he sit down and wait until the production department clears it for the anodizing? A. No, he goes to the stock room, which is right across the aisle from the section—

Q. Yes. A. (Continuing) —and gets another part which is anodized, and turns that one back in again, but in most cases the part is brought to the man on the bench.

Q. And if there is no such part at that time in the department, what does he do? A. He goes to his foreman or lead man and tells him that he has not got the part.

Q. And then the foreman tells him to go and have it anodized? A. No, the foreman puts him on another job. In some cases he would tell the man to take it down to be anodized, but that is very, very rare.

Q. In some cases he would? Is that right? A. In some cases he would.

1600

John Doglione—For Respondent—Cross

Q. And in some cases the foreman would tell the man to go and get the part from another department? A. They do not usually send mechanics or men. They usually use girls for expeditors.

Q. But at times they do? Is that right? A. At times they do.

Q. You say that there were times when there was a shortage of parts, especially during that time? A. Yes, there was times.

1601

Q. You testified that during the Christmas period or the early part of January there were production difficulties; is that right? A. That is right.

Q. Can you tell us what the production difficulties were? A. Well, parts were not coming out the way they should, and we didn't get enough production out of the men we had.

Q. And that was the general situation in your shop or in the plant as a whole? A. No, in two sections of my shop.

Q. In two sections of your shop? A. Of my shop.

Q. Do you know in what two sections of your shop they were? A. Yes.

Q. What were they? A. One was the miscellaneous section and the other section was the rib section.

1602

Q. And that was a general situation at that time? A. In two parts of my shop only.

Q. Yes. A. Yes, sir.

Q. But in those two parts the production difficulties were general? Is that right? A. What do you mean by "general"? Do you mean the whole section, or just on certain parts?

Q. I am asking you what you meant by "production difficulties". A. Well—

Mr. Whittlesey: You used the word "general", and I think you should define it.

The Witness: "General" could mean 50 parts or it could mean one thousand parts.

By Mr. Rubenstein:

Q. But you had production difficulties? A. Yes.

Q. In those departments? A. In those two departments.

Q. What is the name of the foreman in the miscellaneous department? A. Right now?

Q. At the end of December and in the early part of January. A. There was two of them in there, Zilensky and Kowall.

Q. Who spoke to you about this matter that you were testifying about? A. Both Zilensky and Kowall.

Q. They both spoke to you? A. Yes.

Q. They both came over to you and said they were sick and tired of the man?

Mr. Whittlesey: He didn't testify to that.

The Witness: Not that way.

By Mr. Rubenstein:

Q. Which way? A. They said he was lazy and never on the job.

Q. Who said so? A. Zilensky said so, and Kowall said so.

Q. When? A. When?

Q. Yes. A. About the first or second week in January, I believe,—the first week in January, or somewhere around that time.

Q. Who spoke to you first? A. Zilensky, I believe.

Q. And where did he speak to you? A. On the floor.

Q. On the floor? A. Yes, sir.

Q. Did he come over to talk to you? A. No, I was bawling him out about a job which was behind, and he pointed out that he had two or three people who were slow and slackers.

Q. Now, you said that you fired a man about two days before Mr. Katz was discharged. Do you know in what

1606

John Doglione—For Respondent—Cross

department, it was? A. I fired quite a few in there, and I don't exactly know.

Q. Do you know what departments they were in? A. In my department.

Q. Your department is quite a large department; is it not? A. That is right.

Q. Do you know what sections they were in? A. I fired a few out of the cross-tie section that week, and also a few out of the rib section. I believe I fired one out of the miscellaneous section, and one special one out of the spar section.

1607

Q. You say that you had a discussion with Mr. Katz about unions, and you told him that you once belonged to a union? A. That is right.

Q. When did you belong to a union? A. Seven years back would bring us—this is 1942 or 1943?

Q. This is 1943. A. Seven years ago, and then four years, and then two years. That would make it about 13 years ago.

Q. What union did you belong to? A. It was the National Automotive—I know it was A. F. of L.

Q. Where was that? In New York? A. That was in Wilmington, Delaware.

1608

Q. How long did you belong to that union? A. About a year.

Q. Now you testified that you paid some union dues, and you never saw the end of it, or something to that effect? A. That is right.

Q. What did you refer to by that? A. Well, we paid an initiation fee, and also paid dues every week, and then one day the company officials were to come down to the union meeting place and talk to the union delegates and the boys, and stuff, and we went there and nobody was there. The company people were there but the union men

were all standing around and no delegate or nobody showed up.

Q. You are referring to the union you belonged to 13 years ago? Is that right? A. That is right.

Q. And you paid dues and didn't get anything from them? Is that right? A. Well, we got something, yes.

Q. Didn't you tell Mr. Katz that you paid a lot of money to the union, and you never heard from them and they never did anything for you? A. No. I told Mr. Katz that we paid a lot of money into the union, and just at the crucial moment the union backed out.

Q. And you felt that a union, therefore, is no good? A. No, I never felt that way.

Q. Why did you tell him that, then? A. If he remembers right, I said to him, "A union is a good thing, if it is run by honest people."

Q. Is that what you told him? A. That is what I told him.

Q. You are sure that you told him that? A. Pretty sure.

Q. And since that time you never belonged to a union? A. No, I never did. Nobody ever asked me to join a union.

Q. Now you said that you seen some buttons in the shop, union buttons? A. That is right.

Q. You knew that there was a union in the shop, then, before you first discharged Katz?

Mr. Whittlesey: What do you mean, a union in the shop?

By Mr. Rubenstein:

Q. There were union people in the shop? A. There were union people in the shop. In the shop, you mean?

1612

John Doglione—For Respondent—Cross

Q. Yes. A. I am not quite sure, but I believe I did. I believe I did.

Q. When did you testify that you first noticed those buttons? A. Yes, I know I did, because it was before, or it was right around New Years, around New Years or Christmas, or around there when I noticed them.

Q. Around Christmas you were aware that there were people in the union in the shop? Is that it? A. Yes, sir.

Q. Around Christmas time? A. Sometime around there.

1613 Q. And on the day of the first discharge of Mr. Katz, you already knew that there were union activities in the shop? A. Yes, I believe I did.

Q. And when you had your first run-in, so to say, with Mr. Katz at Christmas time, at that time you knew that there were union activities in the shop?

Mr. Whittlesey: I would like to have you define "union activities".

Mr. Rubenstein: Union people.

Mr. Whittlesey: He said he had seen people with buttons on.

The Witness: No, I don't think I did know about that time. I didn't pay much attention to it. It did not mean anything to me.

1614

By Mr. Rubenstein:

Q. When you say you saw a union button, you knew it was a union button? A. I knew it was a union button.

Q. And you knew when a man wears it, he belongs to a union? A. Not exactly.

Q. Not exactly? A. Yes.

Q. You think a man wears a button without belonging to a union? A. Yes.

Q. Did you ever wear a union button? A. Yes.

Q. When? A. About 13 years ago.

Q. You tell us you were a union man at that time?

A. Yes, sir.

Q. Without belonging to a union, did you ever wear a union button? A. Yes.

Q. When was that? A. Before joining the union.

Q. When? A. Before I ever joined the union, I wore the button about two months.

Q. Who gave you those buttons? A. One of the boys in the shop.

Q. But, at any rate, you knew people were wearing those buttons? A. Yes, I knew people were wearing those buttons.

Q. And you knew that people belonged to the union?

A. Yes, I believe I did know.

Q. Did you know that people were signing up members in the shop for the union? A. No, I did not.

Q. And at the time you first discharged Katz, did you know that people were signing up members in the union?

A. No, I don't think I did know.

Q. You don't think so? A. No.

Mr. Rubenstein: That is all.

Mr. Whittlesey: That is all.

Trial Examiner Hektoen: Thank you, Mr. Doglione.

Mr. Rubenstein: One more question.

By Mr. Rubenstein:

Q. Did you discuss your testimony last night with someone? A. No.

Q. You are absolutely sure of that? A. Yes. I was home last night.

Trial Examiner Hektoen: You are excused. Thank you.

1618

Albert L. Kress—For Respondent—Direct

(Witness excused.)

Mr. Lumbard: I call Mr. Kress.

ALBERT L. KRESS was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

Trial Examiner Hektoen: What is your full name?

The Witness: Albert L. Kress.

1619

Trial Examiner Hektoen: Your address?

The Witness: 414 East 52nd Street, Manhattan.

Direct examination by Mr. Lumbard:

Q. Mr. Kress, are you employed by Republic Aviation Corporation? A. Yes, sir.

Q. How long have you been so employed? A. About a year.

Q. Will you give us the approximate date? A. May 1942.

Q. What is your position with the company? A. Assistant to the president.

1620

Q. Have you held that position since you started your connection with the company? A. Yes.

Q. What are your duties as assistant to the president? A. Primarily to formulate and administer the company policies and procedures in connection with industrial relations.

Q. Are you in charge of those activities in the company? A. Yes.

Q. Under the supervision of any superior official? A. I report to the president.

Q. Can you state, please, the principal company policies

Albert L. Kresz—For Respondent—Direct

1621

regarding industrial relations, with which you have been concerned? A. Yes. In the field of working conditions, to establish and maintain the best possible working conditions.

To see that jobs are properly safeguarded, insofar as safety devices are concerned.

To establish fair wage differentials between jobs in terms of their relative requirements, insofar as skill is concerned.

To see that grievances are properly and fairly handled.

To see that the policy of equal pay for equal work is carried out effectively. 1622

Build up and maintain a competent supervisory force.

And perhaps as important as any, to recognize the fact that we are dealing with individuals; a large number of people, with varying temperaments and personalities, and treat them as individuals, as you would like to be treated in the same situation.

Q. Now, in asking the next question, I wish you would not give us any absolute figures, but can you state how present employment at your plant, at Republic Long Island, compares in numbers with the employment at the plant in the year 1939? A. Well, it would be approximately 70 or 80 times. 1623

Q. Can you state how it compares with the number of employees of last summer? A. Approximately double, I should say.

Q. That is, since you have come with the company it has doubled? A. Yes.

Q. Now since you became associated with Republic, have any new policies been put into effect with respect to industrial relations? A. Yes.

Q. Were those policies recommended by you? A. Well, they were developed by the staff, and necessarily by myself, but by all of us working together.

1624

Albert L. Kress—For Respondent—Direct

Q. Will you please state what they are? A. Well, for some time previous to last spring, the company had a suggestion system which had not been in too effective operation, and it has been given a great deal of time, and some of the time in the last year, and it is now a rather important part of the process of increasing production. In other words, the opening up of the channel of the filing of suggestions from all the employees of the company can improve production.

1625

Q. Has that been done through any particular group in part? A. Well, not through any particular group, no. It is administered by a staff department.

Q. I am referring to the fact that there has been some testimony about a Victory Council. Is that what you are referring to? A. We have a Victory Council. About a year ago, when the War Production Board asked for industries to set up such an organization, we were one of the first aircraft plants to take the step and set up what the War Production Board called a labor-management committee, but we call it the Victory Council. Its purpose, of course, is to stimulate ideas which will increase output.

1626

Q. At the time that that was inaugurated at Republic, did any of the Eastern aircraft plants have such a committee? A. Not so far as I remember.

Q. You were the first? A. Yes.

Q. Are there any other policies which have been put into effect? A. Yes, about a year ago we introduced the rest period, and were the first Eastern aircraft plant to adopt that practice.

Q. Is that the rest period which has been referred to, where during that time the men smoke? A. Yes, it has been referred to here at times as the smoking period.

Q. How many of those are there during a man's working hours? A. There are two. On the day shift, one in the middle of the morning and one in the afternoon; and the same thing on the night shift.

Albert L. Kress—For Respondent—Direct

1627

Q. Are there any other policies or practices which you would like to mention, which have been put into effect? A. Then the specific policy has been to promote within the organization, in other words to develop men and qualify them for promotion, and we were faced with the problem of where to get people for rapid expansion, a rapidly expanding supervisory force, and we didn't want to do anything that would be alleged to be favoritism, and we announced we were going to need a substantial number of employees for the supervisory force and put out what in effect were competitive examinations. There were some 600 people, as I recall it, who made application, and out of which some 200 were finally selected on a tentative basis as promotion prospects.

1628

Q. How were these policies which you have just stated as being put into effect decided upon?

Mr. Rose: I object on the ground that this testimony is immaterial to the present issues.

Mr. Lombard: I won't press the question.

By Mr. Lombard:

Q. I take it they have all been put into effect, Mr. Kress?

A. Right.

1629

Q. Now are you familiar with the company rule on soliciting? A. Yes.

Q. Is it the policy of the company to enforce that rule?

A. It is.

Q. Has the rapid growth of the company raised problems in securing compliance with that rule?

Mr. Rose: I object as immaterial.

Trial Examiner Hektoen: He may answer.

The Witness: I would say it had from two angles; first, the very rapid increase in employment and the bringing together of many people who previously had not worked in factories before.

1630

Albert L. Kress—For Respondent—Direct

Secondly, the demands placed on the supervisory force itself, the problems of getting out production and dealing with production difficulties meant that some phases of routines or procedures have not had the attention which they would get in the normal plant, where the practices were more firmly established and people had more time to deal with the situation.

By Mr. Lumbard:

1631

Q. I take it that you mean from that, that the enforcement of this rule has been more difficult than it might be under normal circumstances? A. I would say so.

Mr. Rose: Objection.

Mr. Rubenstein: I join in the objection.

Trial Examiner Hektoen: The answer may stand.

The Witness: I would say that the enforcement of many of our rules have been.

By Mr. Lumbard:

1632

Q. And this was one of them? A. This was one of them.

Q. What has been your policy with respect to the enforcement of the particular rule on soliciting? A. We believe there are three tests which ought to be applied to any rule. We would like to have as few rules as possible, but we think that the test is, whether or not a rule is reasonable, whether or not it is necessary, and whether it is consistently applied. The rule with regard to solicitation has to be consistently applied. However meritorious or deserving some particular instances might seem to be, where there has been a request for relaxation of the rule, you can't do it.

Q. Has enforcement of that rule been intrusted to any particular official of the company? A. Yes, Mr. Wilson.

Albert L. Kress—For Respondent—Direct

1633

Q. Who has testified here? A. I believe he has.

Q. Now, Mr. Kress, can you state the company's policy on grievances and the handling of grievances? A. Yes, sir.

Q. Will you please do so? A. Any employee is at liberty to present any grievance criticism or suggestion at any time; he has assurance that when he does he does not run any risk of losing his job. He may go through organizational channels if he chooses in presenting that grievance or may take it to any level of supervision he cares to in the first instance.

Q. What do you mean by "go through company channels"? A. Well, in any type of organization, whether the Army or a factory, has to have certain organization structure.

1634

In the Army you use the term "go to the Sergeant", and "The Sergeant goes to the Lieutenant", and so on.

And a factory organization has a parallel setup. I think that has been brought out here in the course of the testimony as to what the levels of supervision are.

Q. Is that what you refer to as a grievance procedure? A. Yes.

Q. How long has that been in existence? A. I don't know. It was there when I came.

Q. Are grievances really brought up to the top management? A. Definitely.

1635

Q. And even to the president? A. Yes.

Q. Do you recall any instances where grievances have been brought to top of management?

Mr. Rose: I object as immaterial.

Trial Examiner Hektoen: He may answer.

The Witness: Yes. I recall last summer we had a case of, I think about 20 men in a department who felt their foreman was arbitrary and unreasonable, and they signed a petition asking for a hearing or for his removal, which was submitted to the factory

1636

Albert L. Kress—For Respondent—Direct

management and such a hearing was held and the outcome of it was that the foreman was relieved of his duties.

Q. Have you ever handled grievances yourself? A. I do, occasionally.

1637

Q. Could you give us an example of that? A. About two or three months ago a man had been discharged for fighting with a lead man; he asked to see the president of the company. He felt that perhaps his own situation was warranted by what he had done but he thought the lead man himself should have been disciplined more than he was.

He presented his story to the president of the company and the president asked me if I would investigate and find out what the facts of the situation were, which I did, which resulted in the eventual release of the lead man himself.

Q. I take it there have been other instances? A. There have been other instances.

Q. Which you have handled yourself? A. Yes, sir.

Q. You stated the company carries on a comprehensive supervisory training program? A. That is right.

1638

Q. Is the subject of proper handling of grievances discussed— A. Definitely.

Q. (Continuing)—in the course of such program? A. Definitely.

Q. Prior to your becoming associated with the company, Mr. Kress, did you have occasion to examine into this general subject of grievances? And to study it?

Mr. Rose: I object to it as irrelevant and immaterial, Mr. Examiner.

Trial Examiner Hektoen: I suppose we can take his expertness for granted, can we not?

Mr. Lombard: I was going to prove it in a very quick form, your Honor.

Albert L. Kress—For Respondent—Direct

1639

Trial Examiner Hektöen: If you would like to have it we will take it.

Mr. Lumbard: It will take just a minute or two.

Trial Examiner Hektöen: He may answer the question.

The Witness: Yes.

By Mr. Lumbard:

Q. Have you written a book which touches that subject in part, Mr. Kress? A. Yes.

Q. In that book is there a chapter on handling grievances? A. Yes. 1640

Mr. Lumbard: I would like to have this book marked for identification.

(Thereupon the book above referred to was marked for identification as Respondent's Exhibit No. 7 for identification.)

By Mr. Lumbard:

Q. I hand you Respondent's Exhibit 7 for identification, Mr. Kress, which is a book entitled "Foremanship Fundamentals, by A. L. Kress", published by McGraw-Hill Book Company, 1942. 1641

Is that the book to which you refer? A. That is right.

Q. About when was that published in the year 1942?

A. January.

Q. That chapter on grievances in this book I presume sets forth your own view on that subject? A. It does.

Q. Is the subject matter in that chapter substantially what is presented in the supervisory courses with respect to handling grievances? A. It is.

Q. You say it is? A. It is.

Mr. Lumbard: I would like to offer that particular chapter in evidence, Mr. Examiner. It is about 10 pages long.

1642

Albert L. Kress—For Respondent—Direct

Mr. Rubenstein: I object to it as irrelevant and immaterial.

Mr. Lumbard: I thought you wanted a chance to see it.

Mr. Rubenstein: Yes. From my knowledge, I may be able to learn something.

Trial Examiner Hektoen: Without giving the impression of being captious I will reject the offer. Mr. Lumbard, on the ground of the mechanical difficulties of that sort of thing.

1643

Mr. Rose: I would like to see it if you are through with it.

Mr. Lumbard: Yes, sir.

(Book handed to counsel for the Board.)

By Mr. Lumbard:

Q. Have you a procedure of exit interview in your company? A. Yes, sir.

Q. What is that?

Trial Examiner Hektoen: I did not get that question. Will the reporter read it?

1644

(Record read.)

The Witness: It is a practice to interview all people who are released for any reason, voluntary or otherwise, to develop from them their impressions of working conditions, how they regard the company and what sort of treatment they received from their supervisor and that sort of thing, to develop whether or not there are any situations that call for attention.

By Mr. Lumbard:

Q. When did you adopt that practice? A. I believe sometime early in March.

Q. Of this year?, A. Yes.

Q. What is meant by the expression "labor turnover", Mr. Kress? A. That is a measure used to indicate the change in the working force; in other words, how many people you have to hire during a stated time in order to maintain the working force at required level.

Q. Did you hear Mr. Bobrow testify in this proceeding? A. Yes, I heard him.

Q. Do you recall his testimony that there were hundreds and thousands of unadjusted grievances at Republic? A. I recall it, yes sir.

Q. Based upon your experience would you expect or can you say whether there is a relationship between the volume of grievances and labor turnover? A. I would expect there would be.

Q. Is the labor turnover an index to the situation? A. Definitely, it is a measure of the quitting rate of the plant.

Q. I will ask you to state the labor turnover at Republic on an annual basis. A. Approximately 50 per cent. That includes military separation.

Q. What do you consider a reasonable peace time labor turnover rate? A. Between 20 and 30 per cent.

Q. I ask you what would be the labor turnover at Republic after adjustment is made for military separation?

A. About 20 to 25 per cent.

Mr. Rubenstein: I do not want to make objection but I do not see the relevancy of this line of questioning.

Trial Examiner Hektoen: I suppose we are getting up to the policies that are underlying in this case.

Mr. Lombard: We will get to the facts very shortly, your Honor.

Trial Examiner Hektoen: All right.

1648

Albert L. Kress—For Respondent—Direct

Mr. Rubenstein: I object.

Mr. Lumbard: What the witness just testified has to do with the testimony of one of the Board's witnesses, Mr. Rubenstein.

Mr. Rubenstein: I made my objection.

Mr. Lumbard: I just have one or two more questions along this line.

By Mr. Lumbard:

1649

Q. How did your turnover figure compare to the East Coast and West Coast aircraft plants? A. It is the lowest figure.

Mr. Rubenstein: I move to strike it.

Trial Examiner Hektoen: The answer may stand.

By Mr. Lumbard:

Q. Who compiled the data on which you base your answer? A. The United States Bureau of Labor Statistics.

Q. Now, what is a personnel information sheet? A. It is a form that we have in various parts of the plant for the use of any employee who wishes to communicate directly with the industrial relations department on any matter.

1650

Q. You mean those forms are left at certain places?

A. That is right. They can be filled out and dropped in a locked box and collected by a messenger and delivered to the industrial relations department.

Q. How do they get to the management? A. They are brought by messenger directly to the industrial relations department.

Q. Are a great number of these received each month?

A. Yes, I would say about 200.

Q. Do those contain complaints and grievances? A. There are some.

Q. You said they are dropped in a locked box? A. Yes, sir.

Q. So that nobody would see them until they get to management; is that correct? A. That is right.

Q. Have you ever known of an employee being discharged because he presented a grievance? A. Not to my knowledge.

Q. Now just by way of summary before we finish with this topic, can you state how many different channels of communication there are in your company, possible channels of communication between employees and top management? A. Yes. They can go up the line of course of organization as it has been described; they can go direct to any level of supervision they choose; they can fill out the information sheet which will be sent direct to the industrial relations department; they can use the suggestion system; they can contact top management by letter; they can also if they have suggestions in regard to production methods go to the Victory Council.

1652

Q. That is about six different methods? A. Yes, sir.

Q. Sometime during the early part of January, Mr. Kress, were you away from the plant of Republic? A. Yes, almost the first half, as I recall.

Q. Now specifically were you away from the plant of Republic on the 15th of January? A. Yes.

Q. Do you remember where you were on that day? A. Yes, sir. I was out West, in a Western plant.

1653

Q. On that day did you talk over the telephone to Mr. Wilson? A. I believe I did.

Q. That was a Friday. How do you fix that as the date upon which you talked over the telephone to Mr. Wilson?

A. Well, that was the day I left on my way back East. I fix it in relation to a meeting at Buffalo which I attended on the 18th.

Q. Was there anything said in your talk with Mr. Wilson about the display of buttons in the plant? A. He told me there were one or two men wearing steward's buttons,

1654

Albert L. Kress—For Respondent—Direct

as I recall, and asked if I had any advice or instructions as to what, if anything, should be done about it.

Q. What did you say? A. I told him I expected to be back in Farmingdale on the following Tuesday and to do nothing until I returned.

Q. Did you return on the following Tuesday to Farmingdale? A. Yes, sir.

Q. I believe that was January 19th? A. As I recall.

1655

Q. Now with reference to when you returned to Farmingdale, Mr. Kress, when did the case of Sam Stone first come to your attention? A. Sometime the day of the 19th, I believe it was in the morning.

Q. This is the same day you returned? A. Yes, sir.

Q. How did you first learn of that case? A. I believe Mr. Wilson told me about it first.

Q. Were you present at any talk with Mr. Lasker, and Mr. Bofinger on that day? A. Yes.

Q. About the Stone case? A. Yes, sir.

Q. Can you tell us just in substance what was said at that time? A. Well, it was very brief. I was called to Mr. Lasker's office and Mr. Bofinger was present.

1656

They told me that Stone had been warned on the previous Friday in regard to solicitation and Mr. Bofinger had a release. He said Stone had continued to do it since he was warned, and Mr. Bofinger had a release there effective I believe as of the 19th.

Q. Was there any further talk? A. Well, both Mr. Lasker and myself asked Mr. Bofinger whether he had himself seen Stone since the previous Friday soliciting and Mr. Bofinger said he had not.

We both told him he should hold the release until he had personally seen Stone soliciting.

Q. Now when you got back to the plant did you discuss with Mr. Wilson the matter of stewards' buttons which he had mentioned to you over the telephone several days before? A. Yes.

Albert L. Kress—For Respondent—Direct

1657

Q. Did you discuss that problem with any people in the company? A. Yes, I talked with several.

Q. With whom? A. I talked with Mr. Lasker about it; also Mr. Ryan, our counsel.

Q. What was the problem with respect to steward buttons? A. Well, the problem was—

Mr. Rose: I object to the question in its present form, Mr. Examiner.

Mr. Lumbard: I was trying to cut it short, Mr. Rose. I will restate it.

1658

By Mr. Lumbard:

Q. What was the general substance of your talks with Mr. Wilson, Mr. Lasker and Mr. Ryan on this subject, and I do not think you need to go into too much detail, but just the essentials. A. Well, the question was as to what position the company should take in regard to the wearing of shop steward buttons in the plant.

Q. Did you do any research on this subject, Mr. Kress? A. Yes; being interested in it from several angles I made it my business to go through all the LRR and read over and see whether I could find any cases involving a comparable situation to that particular problem, that would throw any light on what we should do, if anything.

1659

Mr. Rubenstein: I object to this entire line of questions as to the reason for checking into and finding any law or any cases on it. I think it is entirely irrelevant and immaterial in this case.

Mr. Lumbard: On the contrary I think, your Honor, it is very material. They have charged discriminatory discharge of these men; we have a right to show the processes through which the responsible officials of the company went in reaching their conclusion and taking the action which they did.

Mr. Rose: I join in the objection.

1660

Albert L. Kress—For Respondent—Direct

Trial Examiner Hektoen: Well, I think you are correct probably in giving us this background but I am wondering if you could not cut it down a little bit.

Mr. Lumbard: I am trying to cut it just as short as I can. We have only had one or two questions on this phase.

Trial Examiner Hektoen: If there were talks it is going to be lengthy.

1661

Mr. Lumbard: Did the witness answer the last question?

((Record read.))

Mr. Rubenstein: I object to that.

Mr. Rose: I object and move to strike it out.

Trial Examiner Hektoen: The objection is overruled.

By Mr. Lumbard:

Q. The LRR means Labor Relations Reporter? A. Right.

1662

Q. Did you, after these discussions and this research reach a conclusion as to what the company's position should be? A. I did.

Mr. Rose: I object.

Trial Examiner Hektoen: Same ruling.

By Mr. Lumbard:

Q. What was your conclusion?

Mr. Rubenstein: I object to that.

Trial Examiner Hektoen: You have a standing objection to this line of inquiry, gentlemen.

He may answer,

The Witness: The conclusion was that since the wearing of shop steward buttons was confusing

Albert L. Kress—For Respondent—Direct

1663.

to our supervisory staff, since it seemed to us to raise definite questions as to the vulnerability of the company in seeming to take any sides in a matter of that kind under the Labor Relations Act, while we knew there might be other organizations similarly situated in the plant.

Thirdly, that it seemed to us that it definitely involved a question of misrepresentation of the status of these individuals.

And finally, since it was apparent or it seemed to be apparent, that questions regarding grievance procedure would arise out of this, and we already had grievance procedure, that under all of the circumstances it would be unwise for us to permit the wearing of shop steward buttons in the plant.

1664

By Mr. Lumbard:

Q. At this time was there any recognized labor union or labor organization? A. No.

Q. Of employees? A. No.

Q. Did any organization claim to represent a majority of the employees in the shop or any section of the plant? A. Not as far as we knew.

1665

Q. Now, having reached the conclusion that you have just stated, Mr. Kress, what action did you take with respect to the matter of wearing steward buttons? A. Well, we never like to be arbitrary or unreasonable. It seemed to me the only fair thing to do would be to discuss the matter with the individuals involved and find out what they had to say about the situation.

Q. Did you arrange to have a talk with any employees?

A. I asked to have arrangements made.

Q. Who made those arrangements? A. Mr. Lasker.

Q. Now do you remember with which employees you talked? A. Yes, sir.

Albert E. Kress—For Respondent—Direct

1666

Q. About this matter? A. Yes, sir.

Q. With whom? A. I talked with Rosenkrantz and Katz, and later with Bobrow and Kahler.

Q. Let's first take your talk with Rosenkrantz.

Who was present at that talk? A. Mr. Lasker, Mr. Doglione, Mr. Rosenkrantz and myself.

Q. How had the name of Rosenkrantz come to your attention? A. I understood he was wearing a steward's button.

1667 Q. Can you tell us about how long this talk with Rosenkrantz took? A. I should say approximately an hour.

Q. Now, without going into all the details, tell us substantially what happened during the talk, the principal things that were discussed. A. Well, Rosenkrantz spoke up by saying he would like to talk about the question of solicitation, and specifically our rule in regard to solicitation.

We had quite a lengthy discussion as to what the rule meant. We wanted to know what we thought it meant.

I explained to him that the rule was a long established rule; it was in the hand-book; that it was the policy of the company to enforce the rule; that we could not make exceptions.

1668

We talked about various types of solicitation. He wanted to know whether he could talk about the union in the shop.

I told him of course he could talk about the union in the shop. This was still a free country and we were not trying to control or determine what the employees talked about as long as it did not interfere with production. It would be ridiculous for us to attempt to tell anybody what they could talk about.

That we definitely drew a line between discussion and solicitation.

Q. Did Mr. Rosenkrantz say what it was he wished to do in connection with solicitation? A. I don't know def-

initely. The purpose of the solicitation of course was to sign up membership in the union.

Q. You mean the giving out of cards? A. Give out the cards and sign them up.

Q. Did Mr. Rosenkrantz state what he intended to do with respect to the rule? A. Yes, he said that he did not want to lose his job and if that was the position we were going to take insofar as the rule was concerned, that he was not going to solicit.

I am not sure he said he had been soliciting.

In other words, he gave me to understand he would abide by the rule. 1670

Q. Was Mr. Rosnekrantz wearing any kind of button? A. He had a steward's button on.

Q. Did you have a talk with him about that? A. Yes. When we finished discussing solicitation I asked him what his steward's button meant, and he said, well, he wasn't really a steward; that he had been told to wear the button.

Q. Did he say who told him? A. I asked him who told him and he said that he had been told by Mr. Grimaldi and Mr. Kerrigan to wear the button.

Q. Is that the same man who wrote you the letter? A. I assume so; I don't know. 1671

Q. Who was Mr. Grimaldi? A. Well, I am not sure I know. I met him since this proceeding started.

He went on to point out that in the interim he was supposed to handle grievances, and stated that of course "We don't"—using his words—"We don't have any confidence in the lead men or foremen in handling grievances. We think they are not neutral. We can't get any results from them."

I asked him if he had ever tried. He said no, he had not tried.

1672

Albert L. Kress—For Respondent—Direct

I said, "Well, then, you haven't had any personal experience to satisfy yourself whether you can get grievances handled or not."

He said, "No, he hadn't."

Q. Did you state whether or not he should continue wearing a steward's button? A. Well, yes, I stated whether he should or not.

Q. What did you state? A. We had quite a discussion about the steward's button. I explained to him our position.

1673

Prior to that he had brought up what he raised, or what he took to be an individual grievance, he wanted to get transferred off his own job. He said it was a little hard for him, and that the blow air drill was bothering one of his eyes.

As I recall Mr. Lasker asked Mr. Doglione to see if it would be possible to transfer him from that particular job.

It was after that we got into the final discussion in regard to the steward's button. I explained to him what our feeling was about it, that since he had stated that he wasn't really a steward, that he had been told to wear the button, we couldn't see why he should continue wearing it, and I asked him if he would not wear the button on company property.

1674

Q. Did he indicate whether he would follow your request? A. He said he would not; that he wanted to keep his job and he would not wear it on company property.

Q. With respect to his request that he be transferred, do you know whether or not he was subsequently transferred, Mr. Kress? A. Yes, sir.

Q. Was he or was he not? A. He was.

Trial Examiner Hektoen: When was this talk regarding Mr. Rosenkrantz?

The Witness: This was the 22nd of January, preceding the one with Mr. Katz.

By Mr. Lumbard:

Q. Do you know whether or not Mr. Rosenkrantz wore a steward's button in the plant after this talk? A. I assume he did not. I do not know personally.

Q. Now later that same day, Mr. Kress, did you have a talk with Robert Katz? A. Yes, sir.

Q. Do you remember who was at that talk? A. Well, Mr. Lasker, Mr. Doglione, myself and Mr. Katz.

Q. And about how long did this talk take? A. About an hour.

Q. Now, tell us, please, what you remember of that talk. A. Well, as I recall it started out quite similar to the previous conversation. Katz wanted to find out what he called his constitutional right in connection with solicitation, and he said that he had been told he could not talk about the union; so I tried to develop with him what he meant by "talk about the union", and tried to make it clear, as we saw it, what the application of the solicitation rule was.

He repeated again that he had been told not to talk about the union.

As I recall, I told him that after all this was not a penitentiary. He had brought up something about if he is working across from somebody, as long as it did not interfere with what either of them were doing, whether they could talk about the union, and if he could ask what the other fellow thought was good.

Then I said, "After all, this is not a penitentiary. We are not trying to tell you what to talk about, whether the union or anything else, as long as it does not interfere with production."

He wanted to know if he could go and talk about—whether he could get groups together.

I said I didn't know, it seemed to me that would raise certain problems. If he could get a group together and

1678

Albert L. Kress—For Respondent—Direct

talk about that, somebody else might want to get a group together and talk about politics, religion or the war or some of our allies. It was quite conceivable that, since we are all individualists and have our own ideas about all these things, that there could be serious differences of opinion arise that might be carried back to the work bench and have an adverse effect on production.

Q. This was with respect to having a meeting of a group? A. Having a group, yes.

1679

Trial Examiner Hektoen: Was this proposed group or possible group to meet during working hours?

The Witness: Well, I assumed during the lunch period.

Trial Examiner Hektoen: During the lunch period?

The Witness: Yes.

By Mr. Lombard:

Q. This was all part of your discussion as to whether he could talk with anybody about the union? A. That's right.

1680

Q. What was the substance of what you said as to whether he could talk to someone about the union? A. As long as it did not interfere with production and did not involve solicitation he was quite free to talk with anybody about the union at any time.

Trial Examiner Hektoen: But there were to be no discussions of a controversial subject in a group?

The Witness: That is right.

Trial Examiner Hektoen: Did you limit the group in any way?

The Witness: You mean as to size?

Trial Examiner Hektoen: Yes.

Albert L. Kress—For Respondent—Direct

1681

The Witness: I don't recall any discussion as of the group size.

By Mr. Lumbard:

Q. As a matter of fact, Mr. Kress, did he ask you at that time for any permission to form groups or hold groups? A. No, that just grew out of the conversation.

Q. This was just a part of your discussion? A. That is right. I also pointed out to him we were not interested, if the employees wanted to organize the union that was their business; we had no position on that at all.

1682

Q. Now was there any talk about stewards and steward buttons? A. Yes. Again I asked him what the significance of his steward's button was.

He was not quite as clear as Rosenkrantz had been. He told me he had been first elected and then he qualified it and said he had been appointed; that the union—I think the way he put it, the union officers had asked for a grievance procedure and he had been authorized to handle grievances in the interim or meanwhile, or something like that.

I tried to find out what his functions were, what he thought he was supposed to do. We did not get very far on that.

1683

Q. Did you express to him any opinions with respect to his wearing of the steward button? A. I told him substantially the same thing I told Rosenkrantz, what the attitude of the company was, and why, and asked him not to wear it.

He told me that he would take it off I believe that afternoon, that he was going to get advice and if they told him to continue wearing it he proposed to continue wearing it.

Q. Was there any talk about wearing any other kind of button? A. Yes. I told him we had no objection at all to his wearing a C. I. O. button as long as it was not a shop

1684

Albert L. Kress—For Respondent—Direct

steward's button; we had no objection to the ordinary kind of button he wore.

Q. Was any statement made at the meeting as to what action would be taken if he continued to wear the steward's button? A. Yes; I recall I turned to Mr. Lasker and told him if Katz continued wearing his button after we asked him not to, to see that he was released.

Q. Did Mr. Lasker say anything to Mr. Katz? A. I am not sure whether he said it directly to Katz or whether he told Mr. Doglione in Mr. Katz's presence, either one.

1685

Q. What did he say? A. Well, that if he persisted in wearing the steward's button after we had asked him not to, he would be released.

Q. Katz was there? A. Definitely.

Q. Now, Mr. Kress, you have mentioned that you spoke to the employees Bobrow and Kahler? A. That is right.

Q. There has been already testimony here that placed such talk on the 26th of January.

Is that the talk to which you are referring? A. Yes, sir.

Q. Who was present at that talk, Mr. Kress? A. Mr. Bobrow, Mr. Kahler, Mr. Lasker, Mr. Wilson and myself.

1686

Q. How long did that talk last? A. Well, more than an hour.

The Witness: Would you mind if I get a drink of water?

Trial Examiner Hektoen: No.

The Witness: More than an hour.

Trial Examiner Hektoen: All right, we will proceed.

Mr. Lumbard: Will the stenographer read the last question and answer?

(Record read.)

Albert L. Kress—For Respondent—Direct

1687

By Mr. Lumbard:

Q. Now, Mr. Kress, can you give us the highlights of this talk, please? A. Mr. Bobrow acted as spokesman practically throughout the talk. He said that he had two things he wanted to talk about. One was the release of Sam Stone and the other of Katz—that was one of the two things he wanted to talk about.

The other was the question of shop steward's buttons. He stated that both of them had been released for soliciting. I pointed out that there was a difference, that Stone had been released for soliciting but Katz had been released because he persisting in wearing his steward's button.

1688

I believe after that we again got into a long discussion about solicitation.

Q. Without going through it all, did you say to them substantially what you told us was said to Rosenkrantz and Katz on the other two occasions? A. Substantially, yes; in other words I tried first to find out as well as I could what they thought their status was as shop stewards, and then I tried to make clear to them what the attitude of the company was insofar as solicitation, the solicitation rule was concerned, so far as the right of the employees to organize if they saw fit, and so far as the rights of the employees to wear any type of CIO button except a steward's button, and our position in regard to the steward's button and why we took that position.

1689

Q. Now was there anything said as to their talking about the CIO in the plant? A. I think they raised the same questions as Mr. Katz did, and again I pointed out to them that we were not trying to tell anybody what to talk about in the plant and certainly were not trying to tell anybody they could not talk about the union in the plant.

Q. Now did you state to Mr. Bobrow and Mr. Kahler, Mr. Kress, did you give them any reasons for this position

1690

Albert L. Kress—For Respondent—Direct

with respect to the wearing of steward's buttons? A. Yes; I think I did on that perhaps in a little more detail with them than I did with the other two boys. Entirely aside from the question of misrepresentation, I mean by that—

1691

Q. Tell us substantially what you told them. A. Well, I told them that a steward, with all the developments in labor organization in recent years, that a steward had gotten to certain pretty definitely and clearly defined functions and responsibilities in the operation of a union agreement, and that since there was no union agreement, that obviously they could not have those duties and responsibilities in that particular plant.

1692

That we looked on the wearing of steward buttons as a misrepresentation; that for all we knew there might be other organizations trying to organize our employees; that if we permitted them to wear a steward's button these other organizations might come back and want the same right, and since it was quite clear to me from discussions that I had had, that one of the specific functions they were setting themselves up to handle, had to do with grievances and we had grievance procedure; we could not go on and allow the mushrooming up of various other organizations who might want the same shop stewardship in the matter of dealing with grievances, and I thought there might be other organizations and that they might want to wear steward's buttons. I am referring now to the other organizations.

Q. Was anything said about the status of the CIO organization in the shop at that time in connection with the wearing of steward buttons? A. Well, I am not sure. We had some discussion as to the fact that the union was not certified, I mean on a bargaining basis, there was no bargaining relationship.

As I recall Mr. Bobrow indicated that even though that particular phase had not been handled in accordance with the law—those were not his words, but what he meant was that even though the union had not established itself by due process, that he still thought there could be bargaining relationship between the company, and I suggested to him that he read the National Labor Relations Act sometime if he had any spare time.

Q. Was anything said at this point of the conversation as to whether or not the wearing of steward's buttons was a misrepresentation? Have you told us about that? A. Yes. I explained to him that we considered the wearing of shop steward's buttons under the circumstances was a misrepresentation.

1694

Q. Was anything said as to whether Mr. Bobrow and Mr. Kahler would continue to wear the steward's buttons? A. Well, toward the end of the conversation Mr. Bobrow made it quite clear; in fact I think he stated in so many words, that he was going to continue wearing his shop steward button, and I think Mr. Kahler agreed.

I said that I was very sorry, that wasn't necessary; that in effect they were making the issue and telling us, "Well, to hell with you. We are going to do it anyway."

1695

So I again pointed out to Mr. Lasker that if they persisted in wearing the shop steward's buttons, they were to be released.

Q. Was anything said with respect to Mr. Katz wearing a steward's button and with respect to reinstatement, anything beyond what you have told us about, Mr. Kress?

A. Well, as I recall, just before we broke up Mr. Bobrow said something to the effect that while he had hoped out of it—I don't recall whether he said "get together" or whether "we might do something about reinstating Katz".

I took it he was making a proposal. I asked him,

1696

Albert L. Kress—For Respondent—Direct

“Well, on what basis?” And he said, “Well”—in other words, if we reinstated Katz on what basis?

He said, “Well, he would continue to wear a steward's button.”

Q. Did you ask him specifically whether Katz would wear the button if he was reinstated? A. He volunteered that.

Q. He volunteered that? A. Yes, sir.

1697

Q. Was anything further said about Stone besides what you have told us? A. There was no further discussion other than at the beginning of the conversation, about Stone.

Q. Mr. Kress, have you ever attempted to find out which employees in the company were active in any union organization among the plant employees? A. No, sir.

Q. Do you know there was a time when CIO literature was being given out at the gates? A. Yes, sir.

Q. Did you ever make any attempt to find out who was doing that? A. No.

Q. Did you ever ask any employee or person connected with the company to ascertain who was passing out such circulars? A. No.

Q. Or who was active in organizing? A. No.

1698

Q. Or who was wearing a plain CIO button? A. No.

Q. Did you ever attempt to find out which employees were members of any union? A. No.

Q. Did you ever express your opinion to any employee about the CIO? A. No.

Q. Or about any union? A. No.

Q. Or about joining any union? A. No.

Q. I take it you have studied the subject of collective bargaining to some extent?

Mr. Rose: I object to that as incompetent, irrelevant and immaterial.

Trial Examiner Hektoen: He may answer.

The Witness: Yes, sir.

By Mr. Lumbard:

Q. In this book that has been identified is there a chapter you have written on that subject? A. Yes, sir.

Q. Under the title of "Collective Bargaining"? A. Yes.

Q. How wide a circulation does that book have, Mr. Kress?

Mr. Rose: I object to it as incompetent and immaterial, Mr. Examiner

Trial Examiner Hektoen: Sustained.

Mr. Lumbard: Does your Honor sustain that?

Trial Examiner Hektoen: Yes.

1700

By Mr. Lumbard:

Q. Do you know whether or not the book you have identified has come to the attention of any of the supervisory staff of the company? A. It has.

Mr. Lumbard: Your Honor, I have no further questions on direct examination but I would like to offer in evidence two chapters from this book which has already been marked Respondent's Exhibit 7 for identification, namely, the chapter on handling grievances, and the chapter on collective bargaining.

1701

Mr. Rose: I will object to it as incompetent and irrelevant. I do not see what the chapters in the book have to do with the issue in this case.

Trial Examiner Hektoen: Frankly, in an off-the-record discussion with Mr. Lumbard I said I was inclined to admit the book for the purpose for which it had been previously offered, namely, the chapter on grievances.

Now, as to collective bargaining, I don't know what that has to do with this case.

Mr. Lumbard: I will not press the offer on that point.

1702

Albert L. Kress—For Respondent—Cross

Trial Examiner Hektoen: I think insofar as the chapter on grievances is concerned, in order to get a very complete picture of the situation from the Respondent's point of view, and on the basis that the theories therein set forth are apparently in force at the Respondent's plant—that is correct, isn't it, Mr. Kress?

Mr. Kress: Yes.

Trial Examiner Hektoen: It may to that extent be admitted.

1703

(The chapter on handling grievances in Respondent's Exhibit 7 for Identification was received in evidence and marked Respondent's Exhibit 7.)

ALBERT L. KBESS resumed the stand and having been previously duly sworn, testified further as follows:

Cross examination by Mr. Rose:

1704

Q. Mr. Kress, there has been reference made to certain employees' handbooks. I think two of them are in evidence, one in 1941 and one in January 1943, and I think I adverted to the one Mr. Wilson referred to as having been issued in the latter part of January or February of this year.

Now do those books set forth the policies and rules and regulations of the company which it desires to bring to the attention of the employees? A. Not entirely. Some of it is done orally.

Q. Orally? A. Yes, sir.

Q. By employees I was referring to the non-supervisory rated employee. A. Yes, sir.

Q. Is that also done orally? A. Yes, sir.

Q. Let me understand. Taking the book as of January 1943, does that bring up to date and set forth the policies

and rules and regulations of the company for the employees to whom the book is issued, that is, up to that time, up to the date of the issuance of the book? A. Well, I am not trying to be captious about it. When you use the term "rules and regulations", that is a pretty broad subject, and there are things I am sure which are not in the handbook that are presented orally to new employees in groups.

For example, I don't recall that there is anything in there in regard to rules for the dress of women employees in the factory. I don't recall that is in the handbook. It is presented, as I say, orally at the time of first employment.

That is why I did not want to answer yes or no to your question.

Q. Would you say that these handbooks contain the outstanding rules and regulations and policies of the company for the employees as up to the time each of the books were issued? A. I think that might be a fair statement.

Q. I have looked through these handbooks, Mr. Kress, and I have been unable to find any reference to the company's policy on grievances or the method for taking up grievances in them.

Are they in there? Those rules in the books? A. I don't think they are.

Q. I beg your pardon? A. I don't think so.

Q. They are not? A. To the best of my knowledge they are not. May I qualify that?

Q. Yes. A. I believe that is one of the things discussed in this induction talk that I referred to.

Q. But not contained in the handbooks? A. That is right.

Q. Now is there anything at all in those handbooks relating to grievances? A. I wouldn't answer yes or no; I would have to look that point up.

1708

Albert L. Kress—For Respondent—Cross

There are 20 or 30 pages of closely printed matter; I would not want to say.

Q. Now directing your attention to Board's Exhibit 9, the letter you received from Mr. Kerrigan, you held no conference with Mr. Kerrigan concerning the subject matter of his letter? A. No.

Q. Did you? A. No.

Q. Nor did you know what he wanted specifically with respect to grievances, did you? A. No.

1709

Q. You had no knowledge as to just what he had in mind with respect to grievances for his members; is that right? A. Well, the question is not clear.

May I see his letter?

Q. Yes. A. The letter says, "Discuss the establishment of grievance procedure."

Q. Yes, but just what he wanted to establish you had no knowledge? A. No.

Q. That is correct, is it? A. The answer is no, I had no knowledge.

Q. And it is the policy of your company to encourage employees in connection with the grievance machinery you have told us about? A. Encourage them in what?

1710

Q. To follow it? A. Will you repeat that question?

Trial Examiner Hektoen: Read the question.

(Question read.)

Mr. Rose: I withdraw the question.

By Mr. Rose:

Q. It is the policy of the company to encourage employees to follow the grievance machinery; isn't it? A. When you say "encourage" what do you mean?

Q. Is it the policy of your company to encourage employees to follow your grievance machinery? A. Well, if they have anything to bring up.

Albert L. Kress—For Respondent—Cross

1711

Trial Examiner Hektoen: What he means to say I think is, the company wants its rules followed, and you seem to have grievance procedure and you want it followed?

The Witness: If they have anything they would like to present in the form of grievances, surely.

Trial Examiner Hektoen: Of course they would not do it otherwise, so you agree; is that right?

The Witness: Yes.

By Mr. Rose:

1712

Q. You know what a union steward is, don't you, Mr. Kress? A. Do I know a union steward?

Q. You know what a union steward is? A. Well, I have an idea.

I thought first you asked me if I knew one personally.

Q. No, I did not mean that. I mean you know what a union steward is and what he is supposed to do? A. I have an idea.

Q. You knew about that at the time you wrote this book? A. Sir?

Q. At the time you wrote this book you had some knowledge? A. Yes.

1713

Q. As to what a union steward is; did you? A. Yes, sir.

Q. Is that right? A. Yes, surely.

Q. Now, in connection with the meeting of January 26, in connection with grievances, Mr. Bobrow spoke about arranging some method for taking up grievances; is that right? A. I don't recall he did, no.

Q. You have no recollection at all? A. No.

Q. Do you have any recollection as to whether he spoke about a bargaining relationship? A. He used that term "bargaining relationship".

Q. And did you understand him to refer to something

1714

Albert L. Kress—For Respondent—Cross

in connection with the taking up or handling of grievances?

A. By that term?

Q. Yes. A. I assumed he was using it in the broad sense of the term.

Q. He had not asked you for a contract, had he? A. No.

Mr. Rose: That is all.

By Mr. Rubenstein:

Q. Mr. Kress, in establishing policies for the Republic Aviation plant at Farmingdale do you need the approval of the president? A. Do I need the approval of the president?

Q. That is right. A. Not always.

Q. When you say "not always", are there any exceptions? A. Yes, sir.

Q. Can you tell us briefly when and in what instances you need the approval of the president and in what instances you can install your own policies? A. It will take a long time.

Q. Can you make it short? A. I can't very well. The answer depends on the character of the policy, the extent to which I feel I may proceed independently, and the presence or absence of the president at a particular time.

Q. Well, specifically, in establishing labor relations procedure and grievance policy, do you have to get the approval of the president before you put it into the plant? A. I don't know what you include when you talk about "labor relations procedure."

Q. Well, labor relations. A. That is a big subject.

Q. To make it still narrower, if you are talking about grievance procedure— A. Yes, sir.

Q. (Continuing) —now, in establishing that grievance procedure that you testified before on direct examination—

A. Yes.

1716

Albert L. Kress—For Respondent—Cross

1717

Q. (Continuing) —did you have to have the approval of the president before you put it through? A. That was discussed with him, yes.

Q. Before you put it through? A. Yes.

Q. Was your plan approved? A. Well, there were slight modifications in the course of the conversation.

Q. Will you tell us what the slight modifications were? A. Well, this particular episode took place the last of June or July.

Now, when I say "slight" I mean a change of the word here or a paragraph there.

1718

Q. That was about all? A. Yes.

Trial Examiner Hektoen: What were the paragraphs you referred to? There is no printed grievance procedure.

The Witness: I don't know. He was asking me about grievance procedure. I am just trying to think back to the time when we discussed it.

Trial Examiner Hektoen: I get the impression you are referring to something printed by your use of the terms "words and paragraphs."

The Witness: Well, we have a statement in writing.

1719

Trial Examiner Hektoen: I see.

The Witness: For the guidance of our supervisory force, yes.

Trial Examiner Hektoen: I see.

The Witness: I don't know whether that is what Mr. Rubenstein is referring to or not. I assumed that is what he was trying to get at when he asked me.

By Mr. Rubenstein:

Q. When you answered the questions of the Trial Examiner as to what you had in your book you are referring

1720

Albert L. Kress—For Respondent—Cross

to a statement that was either printed, mimeographed or typed; is that it? A. Yes.

Q. And besides a word or a paragraph changed thereon here and there, there were no specific changes of your proposals; is that right? A. That is right.

Q. Now, when you introduced that proposal you had your book published already? A. Yes, sir.

Q. And that proposal or adopted form was distributed among your employees? A. We are going back now to the middle of last summer. Was it distributed at that time?

1721

Q. Was it distributed? A. It was the basis of discussion and explanation. It was not distributed at that time.

Q. When was that finally adopted or approved? A. I would say at that particular time.

Q. At that time? A. Yes, sir.

Q. You would say about June of last year? A. The middle of the summer.

Q. The middle of the summer? A. Yes. I would not get down to any month.

Q. After it was finally adopted in the final shape did you distribute it among your employees? A. No.

Q. You did not? A. No.

1722

Q. What did you do with it? A. As I tell you we made it the basis for discussion with our supervisory staff.

Q. And that was all? You did not give it to your supervisory staff and say you have to follow these paragraphs, or "these instructions", did you? A. No.

Q. The answer is no; is that right? A. That is right.

Q. You just had a general discussion of your ideas; is that correct? A. Well, you asked the question, "Did you give it to them and tell them they had to follow this and this."

I don't know that we ever presented those facts exactly in the words you have described.

Q. Well, you have Respondent's Exhibit 1 consisting of rules? A. Yes.

Q. The testimony was given here that these booklets were distributed to all employees and they were expected to live up to the letter of these booklets.

Did you have a different procedure with regard to instructions to your supervisory staff than to the employees?

A. Are you asking me whether that was printed and given to the supervisory staff like that book is given to the employees?

Mr. Rubenstein: Will the stenographer read the question, please, to the witness?

(Record read.)

By Mr. Rubenstein:

Q. Will you now answer the question? A. It still is not clear to me what you are trying to get at.

Mr. Rubenstein: I want to be helpful—

Q. Yes. A. —but you are using pretty broad terms.

Now, you used a term "instructions" and "supervisory staff." I don't know whether you are referring to particularly the handling of grievances or whether you are referring to what might be most anything.

Q. Well, you have the intelligence to know we are talking about grievances now and I asked you the direct question about how you supervised your supervisory staff about your grievance procedure. That is what we have been talking about all the time. A. Let me go back. May I go back?

Trial Examiner Hektoen: Not too far.

The Witness: No.

Trial Examiner Hektoen: Just far enough.

The Witness: I will tell the story.

1726

Albert L. Kress—For Respondent—Cross

Is that on the record?

I testified I believe on direct examination, Mr. Rubenstein, that the grievance procedure substantially was in effect and had been so far as I knew for some time before I became a member of the organization. In other words, when I make that statement I am referring to the going up the line with grievances until you come to a level of supervision that has responsibility and knowledge to permit of the grievances being settled.

1727

Now the grievance procedure, we last summer formulated what was in existence; it was not reduced to writing, if that is what you are trying to get at, and given to the supervisory force in the same way that that handbook was given to employees.

Q. It was not given in the same way; is that it? A. Sir?

Q. It was not given you say in the same way as the handbook was given out? A. I say it was not reduced to writing and furnished the supervisory staff in the same way that handbook was given out.

1728

Q. Did I understand you correctly in your recent statement that grievance procedure was in existence before you came to the plant? A. To the best of my knowledge.

Q. Is that right? A. To the best of my knowledge.

Q. That is what you testified? A. Wait a minute. You asked me was the grievance procedure in effect before I came to the plant.

I said, to the best of my knowledge.

Mr. Rubenstein: Will the stenographer read the question I asked the witness, and will you listen to the question?

Trial Examiner Hektoen: Wait a minute.

There was a grievance procedure when you entered on the scene?

The Witness: Yes.

Trial Examiner Hektoen: All right.

By Mr. Rubenstein:

Q. That grievance procedure is the same as is being followed now; is that right? A. Substantially.

Q. So that the grievance procedure is not the one that you outlined in your book which was introduced into evidence here I understand by the Respondent attorneys; is that correct? A. I would not say that, no. The chapter in the book deals with other things besides the bare procedure itself.

Q. Is it or is it not? A. What?

Q. The same that you outlined in your book? A. The one now in existence? 1730

Q. That is right. A. I would say it was substantially the same as outlined in the book.

Q. That was in existence prior to the time that you became associated with Republic Aviation; is that it? A. Basically.

Q. Basically? A. Yes.

Q. Were any changes made since you became associated with Republic Aviation? A. Yes, sir.

Q. Will you tell us what changes were made in the grievance procedure? A. Well, we clarified and spelled out the manner in which a supervisor should listen, act, try to draw facts and make sure he gets exactly what is on the employee's mind. 1731

We clarified and made it clear that action should be given as promptly as possible; that it should not be allowed to drag along; that if the foreman cannot in 24 hours settle the thing, that he should go to his superior and so on until he found somebody that had knowledge of the facts to act on it.

Q. Did you also establish a procedure on the way by which an employee would submit his grievance? A. You are referring to some particular written form that he uses to make out?

Q. Either written form or mechanical plan, the layout. A. We don't have any written form, no.

1732

Albert L. Kress—For Respondent—Cross

Q. Did you give any instructions and make any decisions about it? A. About how to use a written form, no.

Q. Did you make it plain generally on how an employee in the ranks can present his grievance and follow it up?

A. I would say yes.

Q. You did? A. Yes.

Q. That was a part of your grievance procedure? A. You mean before or after I came with the company?

Q. Since you came with the company? A. Yes.

1733

Q. Did you at any time notify employees how to take up grievances? A. I stated in answer to a question to Mr. Rose that I believe—

Q. Answer my question. A. I believe that was explained to the employees during this process of presenting and clarifying the handbook; in other words, what we call the induction talk.

Q. You mean each employee? A. It is given in a group of employees.

Q. In a group? A. Yes, sir.

Q. You mean there are meetings of employees, groups of employees, at which time they were told how to proceed about grievances? A. I wouldn't say that now. I said I believed that this was given to new employees in groups at the time of the induction talk.

1734

Q. You believe that? A. Yes, sir.

Q. But you don't know whether it was done? A. I haven't cited one since last November.

Q. Now in this book submitted here and marked Respondent's Exhibit 7, on page 121 it is stated:

"If a man wants to bring a fellow worker along for moral support when he presents a grievance he should have that privilege."

Is this the policy of your company? A. In some instances.

Q. What? A. In some instances.

Q. In some instances? A. Yes, sir.

Q. What do you mean, "in some instances"? A. Well, it depends on the character of the topic. After all we are a war plant. There is no need in having three or four people sit around if one person has something on his mind particularly.

Q. You mean it is up to the company to determine when an employee may come with someone else to take up his grievance? A. I would say so, yes.

Q. So that grievance procedure in effect in the plant is not the grievance procedure outlined by you in your book? A. Are you referring to every word?

Q. Well, on the main basis. A. Substantially it is.

Q. But you feel that an employee, before he can take up his grievance with someone else has got to have permission to do so? A. Where did I say that or when?

Q. Didn't you testify that only in some instances may an employee bring someone along with him to take up his grievance?

Mr. Lumbard: That is quite different.

The Witness: That is different from your previous question.

By Mr. Rubenstein:

Q. Now again as to some grievances in the plant, an employee comes and brings up someone and says "I want to have my grievance taken up with this man or these two men", is it up to the employee to bring in the man or the two men, or is it up to the foreman or supervisor to determine whether or not the two individuals or the one individual may be present? A. I would say it is up to the foreman.

Q. It is up to the foreman? A. Yes, that is right.

Q. He may determine whether or not a man can bring up his grievance with someone else that he wants to? A. Yes.

Q. So therefore the employee does not have the privi-

1738

Albert L. Kress—For Respondent—Cross

lege of handling his grievance at Republic Aviation in the manner you are talking about in your book? A. I don't agree with that.

Trial Examiner Hektoen: Except in some instances.

By Mr. Rubenstein:

1739

Q. Now, as a matter of fact, Mr. Kress, you know that only yesterday I think a committee of three tried to see you with reference to a grievance and you refused to see them?

The Witness: That is not strictly correct.

By Mr. Rubenstein:

Q. What would you say is correct about that?

Mr. Lombard: About what?

By Mr. Rubenstein:

1740

Q. About yesterday's occasion. A. I saw one of them.

Q. You did see one? A. Yes, sir.

Q. But you refused to see the committee? A. That is right.

Q. Now you testified that one policy of the company is to adjust pay rates or wage rates; is that right, to see that individuals doing the same work get the same pay? A. I did not use those words.

Q. Well, is this the intent, or was this the intent of your testimony? A. I would say so.

Q. Do you have a classification schedule printed for various wage rates? A. What do you mean by printed?

Q. Well, established or mimeographed? A. Yes, sir.

Q. You have it? A. Yes, sir.

Q. The employees have that? A. Yes.

Q. Are individual employees told what classification

they are in? A. To the best of my knowledge when they inquire they are.

Q. When they inquire? A. Yes, sir.

Q. Until and unless they inquire they are not told; is that right? A. I think that is right.

Q. You testified as to the meaning of a steward button. I take it you are acquainted with unions and their various insignias; is that right? A. You are asking me if I am acquainted with unions and their various insignia?

Q. Yes. A. Not necessarily.

Q. Are you acquainted or do you know of your own knowledge what a steward is? A. Do I know what a steward is? 1742

Q. That is right. A. I have read about them and talked with them in various plants and seen them operate.

Q. Do you know that stewards in many plants do not take up grievances?

The Witness: You want a yes or no answer to that?

By Mr. Rubenstein:

Q. I would appreciate it. A. I do not know. 1743

Q. Are you acquainted with the grievance procedure established in General Motors? A. General Motors?

Q. Yes. A. I have read the General Motors contract in by-gone years; I have not read it in the last year, the last year or two I haven't read the agreement.

Q. Do you know whether the stewards there take up grievances? A. Well, I have already told you I have not seen the contract of last year or two, so I don't know whether they take them up or not.

Mr. Lumbard: This is where there is a contract with a union?

Mr. Rubenstein: In General Motors; yes.

Y744

*Albert L. Kress—For Respondent—Redirect**By Mr. Rubenstein:*

Q. You don't know whether there is a difference between stewards in shops having a contract and shops not having a contract? A. I have not seen or heard of stewards in shops not having contracts.

Q. You never heard of them? A. No.

Q. After the four employees were discharged did the United States Conciliation Service get in touch with you? A. Yes, sir.

1745 Q. Regarding the discharged employees? A. Regarding what?

Q. The discharged employees.

Redirect examination by Mr. Lumbard:

Q. Mr. Kress, yesterday how long were you at the plant in Farmingdale? A. 45 or 50 minutes.

Q. That was the first time you had been there for several days? A. That is right.

Q. Did you have an appointment with an employee yesterday at the plant? A. That was my understanding.

1746 Q. How many employees did you understand made the appointment to see you? A. One.

Q. When the employee got there did you find other employees with him? A. Yes.

Q. Then you saw just the one employee; is that correct? A. That is right.

Mr. Lumbard: That is all.

Trial Examiner Hektoen: Is there anything more?

(No response.)

Trial Examiner Hektoen: I get the impression, Mr. Kress, and I want to know if I am right, that you have the power yourself to order a given employee who in your opinion violates the rule, discharged?

The Witness: Yes, sir.

Trial Examiner Hektoen: Is that correct?

The Witness: Yes, sir.

Trial Examiner Hektoen: You go ask Mr. Lasker to do it?

The Witness: That is right. I would not discharge him myself.

Trial Examiner Hektoen: No, but your order is carried out by Mr. Lasker?

The Witness: Yes.

Trial Examiner Hektoen: Now I am not sure I understand this: First, the grievance procedure is not laid out in the rule book; is that right?

The Witness: That is right.

Trial Examiner Hektoen: Second, to avoid that you talked to the employees in the course of the induction talks; is that right?

The Witness: Yes, I believe that is right.

Trial Examiner Hektoen: You just believe that?

The Witness: That is right.

Trial Examiner Hektoen: Third, it does not follow the recommended grievance procedure laid out in the book?

I know what you are going to say, but it does not follow completely.

The Witness: Well, I don't know how many words are in that chapter.

Trial Examiner Hektoen: Well, you named one difference between that recommended and that in force, namely, that you recommended that a person be permitted someone else for moral support, and the procedure in the plant is that it may or may not be done, depending on the discretion of the foreman; is that right?

The Witness: At times, yes.

Trial Examiner Hektoen: Then I believe you recommended that grievances be put on printed

1750

Albert L. Kress—For Respondent—Redirect

forms for record purposes, for accuracy and so on, but that is not done in the plant?

The Witness: Not necessarily.

Trial Examiner Hektoen: It is not necessary?

The Witness: No.

Trial Examiner Hektoen: But in any event it does not follow to that extent your recommended procedure.

The Witness: That is right.

1751

Trial Examiner Hektoen: In determining that the wearing of the steward's button in the plant was violative of the rule, did that come from you solely?

The Witness: Well, that was discussed in my conversation with Mr. Ryan of counsel, Mr. Lasker and Mr. Wilson.

Trial Examiner Hektoen: Then on the 22nd you promulgated that to Mr. Katz and Mr. Rosenkrantz?

The Witness: Right.

Trial Examiner Hektoen: Then one of them was discharged as a consequence of violating that rule, and two more on the 26th; is that right?

The Witness: That is right.

1752

Trial Examiner Hektoen: I have no further questions.

Mr. Lumbard: I take it your Honor used "promulgated" in the sense of Mr. Kress having told somebody about it at that time.

Trial Examiner Hektoen: Well, he said that was the procedure, if the button was worn in consequence of their being fired.

Mr. Lumbard: Yes.

Trial Examiner Hektoen: Is there anything more? If not, thank you, Mr. Kress.

(Witness excused.)

Mr. Lumbard: Your Honor this morning before the commencement of the session I took up with counsel the matter of whether or not the Respondent

Colloquy

1753

would have to call three witnesses on a certain minor point or whether we might work out a stipulation with respect thereto.

Mr. Rose: I ask before you read it, may I suggest that I see it so that we will not confuse the record?

Mr. Lumbard: Yes.

(Document handed to counsel for the Board.)

Mr. Lumbard: Before we rest I would like to have counsel look at our proposed stipulation, so that I can read it into the record.

1754

Trial Examiner Hektoen: Surely.

Mr. Lumbard: It is stipulated that if the witness James Craig was recalled by the Respondent, he would testify that he is not sure whether Edward Romeo or John Kaferstein was section supervisor of the night shift in 01 shop on the night when Arthur Clements was released, and that he would further testify that he did not talk to either Edward Romeo or John Kaferstein on that night about the release of Clements.

That Edward Romeo if recalled by the Respondent would testify that he last was sectional supervisor of the night shift about January 9th or 10th, 1943, when he was transferred to the day shift; at that time John Kaferstein took his place and he took John Kaferstein's place.

1755

He did not talk to Craig about Clements' release.

That John Kaferstein, if called by the Respondent would testify that he became sectional supervisor of the night shift in 01 shop on or about January 11, 1943, and that he did not talk to James Craig about Clements' release and that he signed the release.

Mr. Rubenstein: I would like to make a statement.

1756

Clarence M. Tomford—For Board—Rebuttal, Direct

Mr. Lumbard: I would also like to offer in evidence—I have the original here but I assume it is agreeable to offer in evidence, a photostatic copy of the release of Arthur Clements, dated and effective February 4, 1943.

Trial Examiner Hektoen: Is there any objection?

Mr. Rose: No objection.

Trial Examiner Hektoen: It may be admitted as Respondent's Exhibit No. 8.

1757

(Thereupon the document above referred to was marked as Respondent's Exhibit 8 and was received in evidence.)

Mr. Lumbard: The Respondent rests.

CLARENCE M. TOMFORD was called as a witness by and on behalf of the National Labor Relations Board and, being first duly sworn was examined and testified in rebuttal as follows:

1758

Trial Examiner Hektoen: Give us your name.

The Witness: Clarence M. Tomford.

Trial Examiner Hektoen: What is your address?

The Witness: 12 Main Street, Hempstead, Long Island.

Direct examination by Mr. Rose:

Q. Are you employed by Republic Aviation Corporation? A. I am.

Q. How long have you been employed by the company? A. About a year and eight months.

Q. Have you worn a CIO button in the plant? A. I have.

Q. You have? A. Yes, sir.

Clarence M. Tomford—For Board—Rebuttal, Direct

1759

Q. That was the same as Union's Exhibit 1; is that right? A. That is right.

Q. When was the first time you wore that button in the plant? A. About January 28th or 29th.

Q. 1943? A. 1943.

Q. That was the first time you wore it? A. Yes, sir.

Q. Is that the only CIO button you have ever worn? A. Yes, sir.

Mr. Rose: That is all.

Mr. Lombard: Mr. Rubenstein?

Mr. Rubenstein: That is all. I have no questions. 1760-

I do have one question:

It was testified here that you wore a C. I. O. button sometime during the early part of January or the latter part of December 1942; is that correct?

The Witness: I did not.

Mr. Rubenstein: You are sure that the first time you put a button on was January 28th or 29th, 1943?

The Witness: Right.

Mr. Rubenstein: That is all.

Mr. Lombard: No questions.

Mr. Rose: That is all. 1761

(Witness excused.)

Mr. Rose: I have no further witnesses.

Trial Examiner Hektoen: The Board rests?

Mr. Rose: The Board rests.

Trial Examiner Hektoen: The Respondent rests?

Mr. Lombard: Yes.

Trial Examiner Hektoen: Before we close the record I want to see if your record agrees with mine with respect to the exhibits.

1762

Colloquy

The Board has had marked 16 exhibits, of which all are in evidence except No. 12; the rule book; is that correct?

Mr. Rose: That is correct.

Trial Examiner Hektoen: The Respondent has had marked eight exhibits, all of which are in evidence except 2, Aircraft Voice of February, 1943.

Mr. Whittlesey: That is correct.

Trial Examiner Hektoen: The Union had marked two buttons neither of which is in evidence.

1763

Do you want them in evidence?

Mr. Rubenstein: What is that?

Trial Examiner Hektoen: Read my statement.

(Record read.)

Mr. Rubenstein: No, not necessarily.

Trial Examiner Hektoen: All right.

Mr. Whittlesey: Is the steward's button in evidence?

Mr. Rose: Yes.

Mr. Rubenstein: The union would like to put those two buttons in evidence. They were marked.

1764

Trial Examiner Hektoen: Is there any objection, gentlemen?

Mr. Lombard: No objection.

Trial Examiner Hektoen: They may be received.

(Thereupon the buttons previously marked for Identification as Union's Exhibits 1 and 2 were received in evidence.)

Mr. Rose: Now in connection with Board's Exhibit 12 for Identification, I think I stated I did not offer it because I was only interested in the rule of solicitation. I think I read the rule at that time. I did not want to encumber the record with the entire rule book.

Motion to Dismiss

1765

I wonder if there would be any objection, there seems to be some doubt whether I did actually read it, or not—

Trial Examiner Hektoen: Then why not for the purpose of the rule on solicitation, admit it?

Mr. Rose: All right.

Trial Examiner Hektoen: For the purpose of the rule appearing on page 17.

Mr. Rose: All right.

Trial Examiner Hektoen: Is that agreeable?

Mr. Lombard: No objection.

Trial Examiner Hektoen: It is admitted.

1766

(Thereupon the book previously marked for Identification as Board's Exhibit No. 12 was received in evidence.)

Trial Examiner Hektoen: Are there any motions at this time?

Mr. Rose: There is one other matter with reference to the exhibits. I offered a subpoena, No. B-4052 and the return receipt, which were rejected. If necessary may I have them marked rejected?

Trial Examiner Hektoen: There are none so far. Do you want to start a new category?

1767

Mr. Rose: If there be no objection I would like to do that.

Trial Examiner Hektoen: None at all. Have it marked as Board's Exhibit 17, rejected.

(Thereupon the document above referred to was marked as Board's Exhibit 17 rejected and will be found in the rejected exhibit file.)

Mr. Rose: I will substitute a photostat for that.

Trial Examiner Hektoen: Very well.

Mr. Lombard: Your Honor, the Respondent renews its motion to dismiss the complaint.

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Motion to Conform Complaint to Proof.

Trial Examiner Hektoen: The motion will be taken under advisement and will be ruled on in the intermediate report.

Mr. Rose: The Government moves to conform the complaint to the proof insofar as there may be inaccuracies in the spelling of names or dates and things of that nature.

Trial Examiner Hektoen: Purely formal matters?

Mr. Rose: Yes.

769

Trial Examiner Hektoen: Is there any objection?

Mr. Lumbard: No.

Trial Examiner Hektoen: It may be so amended.

Trial Examiner Hektoen: Suppose these people come along and say: "Yes, I am so and so, vice-president of the C. I. O. local", would there be any objection to that?

Mr. Davenport: I cannot speak for the company, Mr. Examiner.

Mr. Kress: May I answer it?

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Mr. Davenport: But I think it would not be.

Mr. Kress: May I answer it for the company?

Trial Examiner Hektoen: You are going to say "No"?

Mr. Kress: Not the slightest objection.

Mr. Rubenstein: Is that testimony?

Mr. Kress: If you want it.

In the absence of any further business, the hearing is closed.

(Whereupon, at 5:10 o'clock p. m., Thursday, April 22, 1943, the hearing in the above-entitled matter was closed.)



Board's Exhibit 3

REPUBLIC
AVIATION
CORPORATION

APPLICATION FOR EMPLOYMENT

Starts 1/13/41 8:00 A.M. K-504
1/6/41 K-94

Print Name

Full

KATZ

ROBERT

Date

Last Name

First Name

Middle Name

Our No. 292-07-2659

Street Address

1750 Montgomery Ave Bronx, N.Y.

Phone

Ludlow 7-2348

City & State

Bronx, N.Y.

Sex

☒ Male

Female

☐ Married☐ Single☐ Dependents

NONE

Age

24

Date of Birth

12/16/16

Place of Birth

Bronx, New York

U.S. Citizen

YES

Height

SIX FEET

Weight

200

Position Wanted

10

Two years - College - CCNY

Wage Rate Expected

Can You Read Blue Prints

No

References

Mr. Stephen A. Smith - 37 E 12th St. N.Y.C.

EXPERIENCE					
Previous Employers	Address	Work Done	From	To	Rate
Edwin H. Hargrave	44 Wall St. NYC	Bookkeeper	Dec 1934	Apr 1940	18-
Chas. H. Hargrave	128 W 31st St NYC	Follow-up boy	Apr 36	Apr 37	17.2
Super-Fraction Inc.	Long Island City, NY	Office boy	May 37	Sep 37	13-
Eastern Plate & Shipy.	75 Front St. NY	Mail room work	Sep 36	Oct 36	18-
Present Employer	Address	Work Done	From	To	Rate

Cause of accident

City Name

Louis Katz

Address

1750 Montgomery Ave. Bronx.

Relationship to Employee

FATHER

Phone

Lud 7-2348

Signature of Applicant

Robert Katz

Army Approval

Remarks of Interviewer:

Birth Cert # 15 8 7 2
Bronx N.Y. SE 4th St. Mustard Marguagh
1913/41

Form No. 51

Board's Exhibit 3

MAILED BY THE MAIL SERVICE
 DATE 1/15/41
 TO THE MAIL SERVICE
 PAGES 2

8 WHEREAS the REPUBLIC AVIATION CORPORATION, a corporation of Delaware, having its principal place of business at Farmingdale, Long Island, New York, is now engaged in the development, manufacture and sale of various types of aircraft, engines, hulls, engines, and parts thereof and accessories therefor, and of apparatus and processes incident to the manufacture of said devices and the parts thereof, and

WHEREAS I desire employment with said Corporation in the course of which I may be informed from time to time of more or less confidential matters pertaining to these and any other lines of work that the Corporation may now or hereafter be engaged in or in the investigation or development of during my employment.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: that in part consideration of my employment with said corporation, I agree that

1. Any and all inventions and/or improvements which I may conceive of or make along the lines of the Corporation's work, investigation and research while in its employ, shall, notwithstanding that my employment by the Corporation may thereafter terminate, be the sole and exclusive property of the Corporation, and I hereby agree immediately to communicate any and all such inventions and/or improvements to the Corporation and to execute and deliver to it all drawings, blue prints, specifications, assignments, and other proper papers deemed necessary by it to effectuate the disclosure and assignment thereof to the Corporation. I further agree to execute all patent applications and other proper papers deemed by the Corporation necessary or expedient to the filing and prosecution of applications for Letters Patent and the acquisition of such Letters Patent on said inventions and/or improvements in this and all foreign countries and I agree to execute and deliver to the Corporation any assignments of said applications for Letters Patent which the Corporation may request, and I further agree otherwise to assist the Corporation in every proper way at its expense to protect said inventions and/or improvements in any and all countries, said inventions and/or improvements, however, whether patented or not, to be and remain the property of the Corporation.

2. I will regard and preserve as confidential all information pertaining to the Corporation's business that may be obtained by me from specifications, drawings, blue prints, reproductions, and other sources of any sort as a result of such employment, and I will not, without written authority from the Corporation so to do, disclose to others during my employment or thereafter, such or any other confidential information obtained by me while in the employ of the Corporation.

3. The undersigned applicant does hereby agree and acknowledge that, if he is employed by the Republic Aviation Corporation, the employment is on an hourly/weekly basis only and may be terminated by either party, without notice, at any time.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 1 day of 12-41

x Robert Katz (Seal)

Grand Bargman Notary Public
 #4000 Queens Co. 50 H & 3 Nassau Co.
 Cert filed in Suffolk
 SW 10 330-43

REPUBLIC AVIATION CORPORATION - Record of Employees Application and Service -

1. Last Name (Print) KATZ Print First Name ROBERT Payroll Number K-94 Date 3/13/41

2. Street Address Bronx N.Y.C., 1750 MONTGOMERY AVE. Phone Number Lublow 7-2348 Social Security No. 090-07-8659

3. City Bronx State NEW YORK Country USA

4. In Case of Accident Notify LOUIS KATZ Relationship to You FATHER

5. Your Age 24 Date of Birth, Month, Day, Year Dec. 16, 1916 Sex Male ☒ Female ☐ Married ☐ Single ☒

6. Place of Birth New York County Bronx State New York Country U.S.A. Your Color White Brown Brown

7. U.S. Citizen ☒ Yes or No Yes Mother's Maiden Name YETTA BEISPIEL 8. Your Height 5' 11 1/2 inches 9. Weight 200 lbs.

10. Mother's Place of Birth DOLINA, GALICIA, POLAND Last Father's Name or Initials LOUIS KATZ

11. Father's Place of Birth CERNOWITZ, BUKOWINA, ROMANIA 12. Wife's Maiden Name ROSE Last If Other Than Yours How Many Times Have You Been Married None

13. Wife's Place of Birth None 14. First Names of Living Children Born to You ROSE, JULIUS, DAVID

15. Number of Dependents NONE Explain Relationship of Each NONE 16. First Names of Living Brothers and Sisters None

17. Names of Either Parents, Brothers, Sisters of Yourself or Wife (or Husband) Who Reside in Foreign Countries Showing Name of Country for Each NONE

18. If You Are a Naturalized Citizen, You Arrived in the United States or its Territorial Possessions Month At Day On Year the Name of City Name of Ship or Plane Operated By the Name of S. S. or Airline

19. If By Other Form of Transportation, Explain Showing Date and Place of Entry None

20. Pertinent Facts About Your Citizenship Papers Give Your Whereabouts During the Years 1910 to 1915: None 1915 to 1920: 71 St. 1920 to 1940: None

21. Country, Type, Length of Service in Each None Names of Present Employees of This Company H. Nock, J. Martin

22. With Whom You Are Acquainted None

23. Education FAR ROCKAWAY H.S. Located FAR ROCKAWAY City QUEENS State N.Y. Country USA No. Years Attended 4 GENERAL COURSE

24. C.C.N.Y. EVE 23rd St. Ave NEW YORK CITY USA 1 GENERAL

25. Your Favorite Recreations and Sports Are: BASEBALL, BASKETBALL, DANCING

26. What Foreign Languages Can You Read and Write NONE

27. Name of Previous Employer FULLER ROSS & Co Street Address 44 WALL ST. City N.Y. State N.Y. Country USA Work Done Copy Boy From Dec 1937 To April 1940 Rate 18.00

28. Name of Previous Employer Harbort Inc Street Address 170 W 24th St City NY State N.Y. Country USA Work Done OFFICE WORK From April 1938 To April 1939 Rate 17.00

29. Name of Previous Employer CINCO-FREEMAN Co Street Address Long Island City City NY State NY Country USA Work Done OFFICE WORK From May 1939 To Sept 1939 Rate 13.00

30. Name of Previous Employer Carolina State College Street Address 75 Frank St. Bklyn City NY State NY Country USA Work Done Gen. Factory Work From SEPT. 1936 To OCT. 1936 Rate 45 per hr

31. Name of Previous Employer N.Y. EVE JOURNAL Street Address 720 South St. City NY State NY Country USA Work Done COPY BOY From SUMMER 1935 To 1936 Rate 15.00

By My Signature for Item 26 (1) Hereby, Certify That to My Best Knowledge and Belief Information Given for Items 1 to 26, Inclusive, is Correct.

Signature Robert Katz Type of Citizenship Born in U.S.

TO BE NOTED BUT NOT TO BE FILLED IN BY APPLICANT

REPUBLIC AVIATION CORPORATION - Employees Record of Service

ROBERT

Print Last Name

Print Film Name _____

Print Middle Name

Physical
St. Index

Grading and Comments of Tests Taken By Applicant

Classification From Test

Employee's
Payroll Number

RECORD OF CHANGES AND SERVICE RATING

	Date Effective	Sy	Department	Class	Rating	Rate	Foreman	Reasons, Work Done, Remarks
33.	1/13/41	H	Maint.	#3		.50	Faso-Baker	Personnel increase
34.	4-13-41	C	"	"	Clerk	.55	"	Warrants increase
35.	6-29-41	G	"	"	Mechanics	.60	"	Ability warrants increase
36.	7/27/41	C	"	"	"	.70	"	General raise
37.	1-21-41	T	SubAssembly	"	"	"	Koop	
38.	1-18-42	T	Mat. Prep.	"	"	"	Keough	
39.	1-18-42	"	"	C	40-3-9	"	"	Bench mech-Cowl & Ducts
40.	APR 11 1942					.75		
41.	MAY 2 1942							
41.	6-6-42	T	Prim. Assem.		01-8-9	"	Doglione	2 W. Details
42.	7-23-42	P	Prim. Assem.		Bench Assembler	.75	Doglione	Released Infraction of Company Rules
43.	2-2-43	G	"		Assembler	.85	"	
44.								
45.								
46.								
47.								
48.								
49.								
50.								
51.								
52.								
53.								
54.								
55.								
56.								
57.								

BY- H for Hired, T for Transferred, R for Released and C for Change of Rate

Board's Exhibit 4

Hire - Shop 10 Pet any 60

01-500

REPUBLIC
AVIATION
CORPORATION

APPLICATION FOR EMPLOYMENT

First Name

Last Name

Kahler Jr. Raymond

First Name

Middle Name

Street Address

Brookville Rd.

Phone

Brookville 310

City & State

Brookville, L. I.

Male ☒ Female ☐ Married ☐ Single ☐ Dependents

two

Age

26 Date of Birth March 24, 1915 Place of Birth Islip, L. I.

U. S. Citizen

yes

Height

5' 11"

Weight

195

Position Wanted

Sheet metal

Wage Rate Expected

\$2.00/hr.

Education

Oyster Bay High School

Can You Read Blue Prints

yes

Least Aircraft School - 125 hrs.

References

W. H. Dawns - Engineering - Republic Aircraft

Arthur Swander - Druggist - Oyster Bay, L. I.

Previous Employers	Address	Work Date	From	To	Rate
Oyster Bay Garage	Oyster Bay, L. I.	Mechanic Helper	Nov 1940	Jan 1941	\$2.25/hr.
Kahler's Fish Market	Oyster Bay, L. I.	Clerk	Jan 1941	Sept 1941	\$2.00/hr.
Brooklyn Hospital	Long Island City	Sheet Metal	Sept 1941	Oct 1941	\$2.00/hr.
U. S. Village of Oyster Bay	Corr.	Game Warden	Oct 1941	Jan 1942	\$2.50/hr.
Present Employer	Address	Work Date	From	To	Rate
U. S. Village of Oyster Bay	Corr.	Chief Patrolman	Jan 1942	Present	\$3.50 Day

In case of accident, notify - Name Raymond C. Kahler Address Brookville Rd. Brookville L. I.

Relationship to Employee Wife Phone Brookville 310

Signature of Applicant Raymond C. Kahler Agency Approved (Y-N)

Remarks of Interviewer: He - ALBANY, N. Y. - 7/21 - Road at ISLIP, N. Y. on 3/15/45

Has Tools, OK scale, etc. C. Kucylo

Form No. 27

(Over)

WHEREAS, the REPUBLIC AVIATION CORPORATION, a corporation of Delaware, having its principal place of business at Farmingdale, Long Island, New York, is now engaged in the development, manufacture and sale of various types of aircraft, pistons, hubs, engines, and parts thereof and accessories therefor, and of apparatus and processes incident to the manufacture of said devices and the parts thereof, and

WHEREAS I desire employment with said Corporation in the course of which I may be informed from time to time of more or less confidential matters pertaining to them and any other line of work that the Corporation may now or hereafter be engaged in or in the investigation or development of during my employment.

NOW, THEREFORE, THIS DOCUMENTING WITHIN: that in part consideration of my employment with said corporation, I agree that

I. Any and all inventions and/or improvements which I may conceive of or make during the term of the Corporation's work, investigation and research while in its employ, shall, notwithstanding that my employment by the Corporation may terminate hereafter, be the sole and exclusive property of the Corporation, and I hereby agree immediately to assign to the Corporation my and all such inventions and/or improvements to the Corporation and to deliver to it all drawings, data, notes, specifications, assignments, and other papers papers deemed necessary to it to obtain the patents and assignments thereof to the Corporation. I further agree to the filing and prosecution of applications for Letters Patent and the negotiation of such Letters Patent or applications and/or improvements to the said Letters Patent and I agree to execute and deliver to the Corporation any assignments of said applications for Letters Patent which the Corporation may request, and I further agree to assist the Corporation in every proper way at its expense to protect said inventions and/or improvements by any and all available and necessary and/or improvements, however, whether patented or not, to be and remain the property of the Corporation.

2. I will regard and preserve as confidential all information pertaining to the Corporation's business that may be obtained by me from confidential sources, like prices, negotiations, and other sources of any sort as a result of such employment, and I will not, without written authority from the Corporation or its officers, disclose to others during my employment or thereafter, such or any other confidential information obtained by me while in the employ of the Corporation.

3. The undersigned applicants have hereby agreed and acknowledged that, if he is employed by the Republic Aviation Corporation, the employment is at an hourly/weekly basis only and may be terminated by either party without notice at any time.

DO NOT SIGN THIS DOCUMENT I have been told not to sign and not to be involved in this

[illegible]

RINGIER-PRINCE CORPORATION - Record of Employees Application and Service -

1. Name Kahler, E. **2. First Name** Raymond **3. Paid Number** 32000-1-500

4. Last Name Beatrice Ann **5. First Name** Beatrice Ann **6. Place Number** 310 **7. Social Security No.** 025-03-0973

8. Street Address Brookville Rd. Brookville, N.Y. **9. City** Brookville **10. State** N.Y. **11. Phone Number** 310

12. In Case of Accident Evelyn Clark Kahler **13. Relationship** Wife **14. U.S.A.**

15. Date of Birth March 24, 1915 **16. Sex** Male **17. Married** Yes **18. Single** No

19. Place of Birth Islip **20. County** Suffolk **21. State** N.Y. **22. Country** U.S.A. **23. Color** Med. Brown **24. Eyes** Blue

25. U.S. Citizen Yes **26. Mother's Maiden Name** McGowan **27. Father's Name** Raymond C. **28. Year Height** 6 ft 1 in **29. Weight** 185 lbs

30. Place of Birth Islip **31. Country** U.S.A. **32. Father's Name** Raymond C. **33. Maiden Name** McGowan **34. Year Height** 6 ft 1 in **35. Weight** 185 lbs

36. Place of Birth Sayville **37. Country** U.S.A. **38. Father's Name** Raymond C. **39. Maiden Name** McGowan **40. Year Height** 6 ft 1 in **41. Weight** 185 lbs

42. Place of Birth LEWISTON **43. Country** U.S.A. **44. Father's Name** Raymond C. **45. Maiden Name** McGowan **46. Year Height** 6 ft 1 in **47. Weight** 185 lbs

48. Number of Dependents 2 **49. Explain Relationship of Each** Wife, Son **50. First Names of Living Brothers and Sisters** Henry, Arthur, Dorothy, Virginia

51. If You Are a Naturalized Citizen, You Arrived in the United States or its Territorial Possessions March 1915 **52. Name of City** Islip **53. Name of Ship or Plane** Dutch Bay **54. Operated By the** U.S.A.

55. If By Other Form of Transportation, Explain Showing Date and Place of Entry 1915 to 1918 **56. Name of City** Islip **57. Name of Ship or Plane** Dutch Bay **58. Operated By the** U.S.A.

59. Particular Facts About Your Citizenship Papers 1918 to 1920 **60. Name of City** Islip **61. Name of Ship or Plane** Dutch Bay **62. Operated By the** U.S.A.

63. During the Years 1918 to 1920 1918 to 1920 **64. Name of City** Islip **65. Name of Ship or Plane** Dutch Bay **66. Operated By the** U.S.A.

67. If You Have Had Military Service, Show Country, Term, Length of Service in Each 1918 to 1920 **68. Name of City** Islip **69. Name of Ship or Plane** Dutch Bay **70. Operated By the** U.S.A.

71. Name of School Dutch Bay High School **72. Location** Dutch Bay **73. Country** N.Y. **74. Years Attended** 14 yrs **75. Commercial** Yes

76. Name of School Dutch Bay High School **77. Location** Dutch Bay **78. Country** N.Y. **79. Years Attended** 2 yrs **80. Commercial** Yes

81. Name of School First District School **82. Location** St. Nicholas **83. Country** N.Y. **84. Years Attended** 1 yr **85. Commercial** Yes

86. Your Favorite Recreations and Sports Are Baseball, Football, Basketball

87. What Other Persons Know You and Where None

88. Name of Previous Employer Dutch Bay **89. Street Address** 2nd St. Dutch Bay N.Y. **90. City** Dutch Bay **91. State** N.Y. **92. Country** U.S.A. **93. Work Date** 1918-1920 **94. By Name or Title** Operator

95. Name of Previous Employer Habib's Fish Bait **96. Street Address** South St. Dutch Bay N.Y. **97. City** Dutch Bay **98. State** N.Y. **99. Country** U.S.A. **100. Work Date** 1920-1921 **101. By Name or Title** Operator

102. Name of Previous Employer Brooklyn **103. Street Address** Brooklyn **104. City** Brooklyn **105. State** N.Y. **106. Country** U.S.A. **107. Work Date** 1921-1922 **108. By Name or Title** Operator

109. Name of Previous Employer Brooklyn **110. Street Address** Brooklyn **111. City** Brooklyn **112. State** N.Y. **113. Country** U.S.A. **114. Work Date** 1922-1923 **115. By Name or Title** Operator

116. Name of Previous Employer Brooklyn **117. Street Address** Brooklyn **118. City** Brooklyn **119. State** N.Y. **120. Country** U.S.A. **121. Work Date** 1923-1924 **122. By Name or Title** Operator

123. Name of Previous Employer Brooklyn **124. Street Address** Brooklyn **125. City** Brooklyn **126. State** N.Y. **127. Country** U.S.A. **128. Work Date** 1924-1925 **129. By Name or Title** Operator

130. Name of Previous Employer Brooklyn **131. Street Address** Brooklyn **132. City** Brooklyn **133. State** N.Y. **134. Country** U.S.A. **135. Work Date** 1925-1926 **136. By Name or Title** Operator

137. Name of Previous Employer Brooklyn **138. Street Address** Brooklyn **139. City** Brooklyn **140. State** N.Y. **141. Country** U.S.A. **142. Work Date** 1926-1927 **143. By Name or Title** Operator

144. Name of Previous Employer Brooklyn **145. Street Address** Brooklyn **146. City** Brooklyn **147. State** N.Y. **148. Country** U.S.A. **149. Work Date** 1927-1928 **150. By Name or Title** Operator

151. Name of Previous Employer Brooklyn **152. Street Address** Brooklyn **153. City** Brooklyn **154. State** N.Y. **155. Country** U.S.A. **156. Work Date** 1928-1929 **157. By Name or Title** Operator

158. Name of Previous Employer Brooklyn **159. Street Address** Brooklyn **160. City** Brooklyn **161. State** N.Y. **162. Country** U.S.A. **163. Work Date** 1929-1930 **164. By Name or Title** Operator

165. Name of Previous Employer Brooklyn **166. Street Address** Brooklyn **167. City** Brooklyn **168. State** N.Y. **169. Country** U.S.A. **170. Work Date** 1930-1931 **171. By Name or Title** Operator

172. Name of Previous Employer Brooklyn **173. Street Address** Brooklyn **174. City** Brooklyn **175. State** N.Y. **176. Country** U.S.A. **177. Work Date** 1931-1932 **178. By Name or Title** Operator

179. Name of Previous Employer Brooklyn **180. Street Address** Brooklyn **181. City** Brooklyn **182. State** N.Y. **183. Country** U.S.A. **184. Work Date** 1932-1933 **185. By Name or Title** Operator

186. Name of Previous Employer Brooklyn **187. Street Address** Brooklyn **188. City** Brooklyn **189. State** N.Y. **190. Country** U.S.A. **191. Work Date** 1933-1934 **192. By Name or Title** Operator

193. Name of Previous Employer Brooklyn **194. Street Address** Brooklyn **195. City** Brooklyn **196. State** N.Y. **197. Country** U.S.A. **198. Work Date** 1934-1935 **199. By Name or Title** Operator

200. Name of Previous Employer Brooklyn **201. Street Address** Brooklyn **202. City** Brooklyn **203. State** N.Y. **204. Country** U.S.A. **205. Work Date** 1935-1936 **206. By Name or Title** Operator



TO BE NOTED BUT NOT TO BE FILLED IN BY APPLICANT

REPUBLIC AVIATION CORPORATION - Employees Record of Service

—

1911

Frank M. White, Manager

21. Physical Index—

22. Grading and Comments of Tests Taken By Applicant

Classification From Test

Employer's

Payroll

14-00000

RECORD OF CHANGES AND SERVICE RATING

[illegible]

BT- M for Moved, T for Transferred, R for Retained and C for Change of Role

ROBERT F. LIEBMAN ATTAINED - LATVIA PASSPORT 5/10/40
ISSUED TO CITIZENSHIP SINCE DOBROVSKY ACCOMPANIED BY SON
RAIMON. BORN 7/47 - RIGA 7/31/63 - W. EWALD
MOTHER'S FIRST NAME CHANGED AT TIME OF NATURALIZATION - IN GERMANY

WHEREAS, the REPUBLIC AVIATION CORPORATION, a corporation of Delaware, having its principal place of business at Farmingdale, Long Island, New York, is now engaged in the development, manufacture and sale of various types of aircraft, engines, hulls, engines, and parts thereof and accessories therefor, and of apparatus and processes incident to the manufacture of said devices and the sale thereof, and

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NOW, THEREFORE, THIS INDENTURE WITNESSETH: that in part consideration of my employment with said corporation, I agree that

2. Any and all inventions and/or improvements which I may conceive of or make along the line of the Corporation's work, investigation and research while in its employ, shall, notwithstanding that any employment by the Corporation may thereafter terminate, be the sole and exclusive property of the Corporation, and I hereby agree immediately to communicate any and all such inventions and/or improvements to the Corporation and to execute and deliver to it all drawings, blue prints, specifications, statements and other papers and forms deemed necessary by it to obtain the disclosure and assignment thereof to the Corporation. I further agree to execute all patent applications and other proper papers deemed by the Corporation necessary or required in the filing and prosecution of applications for Letters Patent and the acquisition of such Letters Patent on said inventions and/or improvements in this and I further covenant and agree to execute and deliver to the Corporation such any assignments of said applications for Letters Patent which the Corporation may require, and I further agree otherwise to assist the Corporation in every proper way at its expense to protect said inventions and/or improvements in any and all countries, said inventions and/or improvements, however, whether patented or not, to be and remain the property of the Corporation.

2. I will report and preserve as confidential all information pertaining to the Corporation business that may be obtained by me from confidential sources, lists, plans, reproductions, and other means of my own or a result of such employment, and I will not, without written authority from the Corporation as to the disclosure of others during my employment or thereafter, such or any other confidential information obtained by me while in the service of the Corporation.

1. The undersigned applicant does hereby agree and acknowledge that, if he is employed by the Republic Aviation Corporation, the employment is on an hourly/weekly basis only and may be terminated by either party, without notice, at any time.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 12-14-2011 BY 60322 UCBAW

[Handwritten signatures and stamps are visible over the typed text.]

CASE NO. 10-10-10
 OFFICIAL EXHIBIT NO. 5
 NO. 10-10-10
 DISPOSITION
 NO. 10-10-10
 THE NEW YORKER OF
 DATE 10/10/10
 WITNESS
 EDWARD H. FISHER & ASSOCIATES
[Signature]

REPUBLIC AVIATION CORPORATION - Record of Employees Application and Service -

Date: 10/1/2012
Mo. / Day / Year

1. **BROWN** **ROBERT** Payroll Number **24-20 40 70**
Last Name (Print) First Name
62 Re. Franklin St. **HAVENHAY 0-6965** Social Security No. **093-10-7220**

In Case of Accident
 Notify Hampstead Nassau County N.Y. U.S.A.
 Relationship to You WIFE

93-12 BARRINGTON ST. FLAMMIST, LI MAY. 6-6765

4. 25 7. February 21, 1917 8. Male White English English
 Year Age Date of Birth, Month, Day, Year Sex Race Parents' Race

[illegible]

12. (A) B. Gaitano Yes
Vot 80 No

Name CAROLIA LORIA
Vot 60 No

73. 6 74. 7
Vot 90 No

Inches 75. 300
Weight 110

No.	Place of Birth	City or Co.	State	Country	Paternal Name or Initial	Post	Branch	Less Than Other Than Yours
1	St. Louis	St. Louis	Mo.	U.S.A.	W. H. H. H.	Post	Branch	Less Than Other Than Yours

No. _____ Place of Birth _____ City or Co. _____ State _____ Country _____ U.S. Army Serial No. _____ Name _____ First _____ Middle _____ Last _____ How Many Times Have You Been Married _____

No. _____
Place of Birth Schenectady
N.Y.
Date of Birth 1-20-1906
Present Address or Living
Address Born to Free Swedish

1. Name of Person WIFE AND CHILD 2. First Name of Living Person and Name SAY, FATHER, EM, MOTHER

3. as 1976 for National War Goals in Foreign Countries Showing Name of Country for Each NAME

If You Are a Nationalized Citizen, Your Address:
U.S. United States or It's Territorial Possessions: 7 1923 NEW YORK LADITANIA
Special
By No. CUBAN (NOT ONE OF THE)

1. IDENTIFICATION OF U.S. MAY 11, 1951 (NEW YORK, NY)

~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08-26-2010 BY 60322 UCBAW/BJS~~

NAME OF PERSON OR PERSONS TO WHOM THE PROPERTY IS TRANSFERRED

NAME	LOCALITY	DATE	TIME	REMARKS
...

[illegible]

1. NAME JOHN J. 29 11201 GARDEN AVE ALBANY, N.Y. U.S.A. 1 GENERAL

[illegible]

Name of Person	Street Address	City	State	Country	Date Recd.	No. of Copies
<u>Mrs. K. A. F. S. S.</u>	<u>106 W. 2nd St.</u>	<u>N.Y.C.</u>	<u>N.Y.</u>	<u>U.S.A.</u>	<u>1978</u>	<u>5</u>

[illegible]

NAME OF FOREIGN EMPLOYEE	STREET ADDRESS	CITY	STATE	COUNTRY	WORK DATE	DATE OF BIRTH	DATE OF DEATH
JOHN J. HARRIS	35-71st St.	N.Y.	N.Y.	U.S.A.	FOR REGISTER	1-17-1910	1-17-1910

[illegible]

By My Signature for Form 88-1 I hereby certify that to my best knowledge and belief information given for items 1 to 22 inclusive is correct.

7-17-74

TO BE NOTED BUT NOT TO BE FILLED IN BY APPLICANT

REPUBLIC AVIATION CORPORATION - Employees Record of Service

Bohner

Robert

Print Length: 10000

Print Five Pages

Print 00-0000-0000

Physical
Index

Grading and Comments of Tests Taken By Applicant

Classification From Test

Employer's
Payroll Number

224-26 80-965

RECORD OF CHANGES AND SERVICE RATINGS

No.	Date Effective	Ry	Department	Class	Rating	Rate	Personnel	Reasons, Work Done, Remarks
23	4/24/42	H	Construction		Inventory Clerk	\$24	Drapatz	Personnel Increase
24	6-19-42	T	Fuselage		Helper	.60	Befinger	
25	7/18/42	C	"		"	.65	"	1st week raise.
26	8/1/42	C	"	B	Tr-3-9	.70	"	Mid per
27								
28	9-17-42	T	Jigs		Assembler	.75	Swift	
29	1-26-43	E	Jigs		Assembler	.80	Swift	Failed to comply with Co. Rules & Regulations
30	5-2-43	C				.80		
31								
32								
33								
34								
35								
36								
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SY- H for Hired, T for Transferred, R for Released and G for Change of Rate

APPLICATION FOR EMPLOYMENT
REPUBLIC AVIATION CORPORATION

Date June 30, 1945

Board's Exhibit 6

PLEASE DO NOT WRITE IN THIS SPACE
Aviation Fund

Former Republic Employee Yes ☐ No ☒ *1 copy*

Selective Service Classification

<input checked="" type="checkbox"/> 1-A	<input checked="" type="checkbox"/> 6-F	<input checked="" type="checkbox"/> 3-A
Exempt	Deferred	Class.

Interviewed *[Signature]*

First Choice *Sheet Metal*

Second Choice *Paint*

If so, when?

Name STONE SAM

Social Security No. 57-03-456

Address 1745-52 St Bklyn N.Y.
Street and Number City State

How long lived at this address 1 year Telephone Number —

Occupation Upholsterer

Position Applied for —

In case of accident, notify Rose Stone - 1745-52 St Bklyn, N.Y.

Friend whom give

husband's full name

his birthplace

his place of employment

BIRTH RECORD		NATURALIZATION		PERSONAL		PHYSICAL	
DATE	PLACE	DATE	PLACE	NAME	SEX	WEIGHT	HEIGHT
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Sam</u>	<u>M</u>	<u>150</u>	<u>5'7"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Rose</u>	<u>F</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>John</u>	<u>M</u>	<u>140</u>	<u>5'6"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Mary</u>	<u>F</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>130</u>	<u>5'5"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>120</u>	<u>5'3"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>110</u>	<u>5'1"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>James</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Patricia</u>	<u>F</u>	<u>90</u>	<u>4'9"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Robert</u>	<u>M</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Charles</u>	<u>M</u>	<u>110</u>	<u>5'2"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>William</u>	<u>M</u>	<u>120</u>	<u>5'4"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Elizabeth</u>	<u>F</u>	<u>100</u>	<u>5'0"</u>
<u>1931</u>	<u>Poland</u>	<u>1931</u>	<u>Poland</u>	<u>Thomas</u> </			

REFUNDED PRINT CORPORATION

Record of Employees Application and Service

Board's Exhibit 6A

1. Last Name (Print) STONE First Name SAM Payroll Number 150

2. Street Address 1745-52 St. City BKlyn State KINGS Country N.Y. Phone Number

3. Social Security No. 382-03-434

4. In Case of Accident Notify ROSE STONE Relationship to You Wife

5. Date of Birth 31 Month 11 Day 10 Year 1910 Sex M Single ☐ Married ☒ Divorced ☐ Widowed ☐ (Check one)

6. Place of Birth Makawa Country Poland Race White Color Blue Eyes Blue

7. U.S. Citizen X Mother's Maiden Name Lina Father's Name Adam First Name Adam Last Name Ham

8. Place of Birth Makawa Country Poland Wife's Maiden Name ROSE Last Name Schurer

9. Place of Birth BKlyn Country N.Y. First Name of Living Children Born to You Jack, Colin

10. Number of Dependents 2 Explain Relationship of Each (Remember Total No. 4-Wife, Mother, & Children)

11. Name of Either Parents, Brothers, Sisters of Yourself or Wife (or Husband) Who Reside in Foreign Countries Showing Name of Country for Each

12. If You Are a Naturalized Citizen, You Arrived in the United States or its Territorial Possessions 1920 At N.Y.C. On Pres. Wilson Coasted By the Name of S. S. or Airline

13. If by Other Form of Transportation, Explain Showing Date and Place of Entry

14. Name of Court, City & State Where Citizenship Papers Were Issued District Court of The United States, Detroit, Mich

15. Give Year When Issued 1920 to 1920 Makawa, Poland to 1920 Makawa, Poland to 1920 U.S.A.

16. If You Have Had Military Service, Show Country, Type, Length of Service in Each None

17. With Whom You Are Associated None

18. EDUCATION

19. P.S. #2 Location Manhattan City N.Y.C. State N.Y. No. Years Attended 4 Last Date Attended 1920 Major Study General

20. St. Washington Eve. Hg. Location Jersey Pl. City N.Y.C. State N.Y. No. Years Attended 2 Last Date Attended 1920 Major Study General

21. The City High Sch. Location N.Y.C. City N.Y. State N.Y. No. Years Attended 1 Last Date Attended 1920 Major Study General

22. Aviation Trade Center Location Manhattan City N.Y. State N.Y. No. Years Attended 4 Last Date Attended 1920 Major Study Aviation

23. Your Favorite Recreations and Sports Are Swimming, Basketball, Tennis, Football, Baseball, Music

24. What Foreign Languages Can You Read and Write

25. EXPERIENCE AND/OR REFERENCES

26. Name of Previous Employer Contemp Shop Street Address 44 W. 18th City N.Y.C. State N.Y. Country U.S.A. Work Date 1921 to 1921 By Name or What 1

27. Name of Previous Employer Washburn & Sons Street Address Manhattan City N.Y. State N.Y. Country U.S.A. Work Date 1921 to 1921 By Name or What 2

28. Name of Previous Employer Street Address City State Country Work Date to By Name or What

29. Name of Previous Employer Street Address City State Country Work Date to By Name or What

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Board's Exhibit 6A

TO BE NOTED BUT NOT TO BE FILLED IN BY APPLICANT

REPUBLIC AVIATION CORPORATION - Employees Record of Service

11. <u> </u> Last Name First Name Middle Name		12. <u> </u> Grading and Comments of Tests Taken By Applicant
13. <u> </u> Physical Index		

Employer's
Social Security Number

Classification From Test

RECORD OF CHANGES AND SERVICE RATING

[illegible]

28 1/2

28 4 1944

BOARD OF DIRECTORS

Board: 84

605

DATE 2/10/23
IN THE MATTER OF *John Doe*
NO. 12345
CASE NO. 12345 (OFFICIAL EXHIBIT)
7-A-10-11

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
<p>1. Name of the person or organization: John Doe</p> <p>2. Address: 123 Main St, New York, NY 10001</p> <p>3. Date of birth: 01/01/1900</p> <p>4. Date of death: 12/31/1999</p> <p>5. Date of entry: 01/01/1900</p> <p>6. Date of exit: 12/31/1999</p> <p>7. Date of last update: 01/01/1900</p> <p>8. Date of next update: 12/31/1999</p> <p>9. Date of last review: 01/01/1900</p> <p>10. Date of next review: 12/31/1999</p> <p>11. Date of last audit: 01/01/1900</p> <p>12. Date of next audit: 12/31/1999</p> <p>13. Date of last inspection: 01/01/1900</p> <p>14. Date of next inspection: 12/31/1999</p> <p>15. Date of last assessment: 01/01/1900</p> <p>16. Date of next assessment: 12/31/1999</p> <p>17. Date of last evaluation: 01/01/1900</p> <p>18. Date of next evaluation: 12/31/1999</p> <p>19. Date of last analysis: 01/01/1900</p> <p>20. Date of next analysis: 12/31/1999</p> <p>21. Date of last report: 01/01/1900</p> <p>22. Date of next report: 12/31/1999</p> <p>23. Date of last summary: 01/01/1900</p> <p>24. Date of next summary: 12/31/1999</p> <p>25. Date of last conclusion: 01/01/1900</p> <p>26. Date of next conclusion: 12/31/1999</p> <p>27. Date of last decision: 01/01/1900</p> <p>28. Date of next decision: 12/31/1999</p> <p>29. Date of last action: 01/01/1900</p> <p>30. Date of next action: 12/31/1999</p> <p>31. Date of last result: 01/01/1900</p> <p>32. Date of next result: 12/31/1999</p> <p>33. Date of last outcome: 01/01/1900</p> <p>34. Date of next outcome: 12/31/1999</p> <p>35. Date of last impact: 01/01/1900</p> <p>36. Date of next impact: 12/31/1999</p> <p>37. Date of last effect: 01/01/1900</p> <p>38. Date of next effect: 12/31/1999</p> <p>39. Date of last consequence: 01/01/1900</p> <p>40. Date of next consequence: 12/31/1999</p> <p>41. Date of last implication: 01/01/1900</p> <p>42. Date of next implication: 12/31/1999</p> <p>43. Date of last significance: 01/01/1900</p> <p>44. Date of next significance: 12/31/1999</p> <p>45. Date of last importance: 01/01/1900</p> <p>46. Date of next importance: 12/31/1999</p> <p>47. Date of last relevance: 01/01/1900</p> <p>48. Date of next relevance: 12/31/1999</p> <p>49. Date of last applicability: 01/01/1900</p> <p>50. Date of next applicability: 12/31/1999</p> <p>51. Date of last suitability: 01/01/1900</p> <p>52. Date of next suitability: 12/31/1999</p> <p>53. Date of last feasibility: 01/01/1900</p> <p>54. Date of next feasibility: 12/31/1999</p> <p>55. Date of last practicability: 01/01/1900</p> <p>56. Date of next practicability: 12/31/1999</p> <p>57. Date of last reasonability: 01/01/1900</p> <p>58. Date of next reasonability: 12/31/1999</p> <p>59. Date of last rationality: 01/01/1900</p> <p>60. Date of next rationality: 12/31/1999</p> <p>61. Date of last logicity: 01/01/1900</p> <p>62. Date of next logicity: 12/31/1999</p> <p>63. Date of last rationality: 01/01/1900</p> <p>64. Date of next rationality: 12/31/1999</p> <p>65. Date of last logicity: 01/01/1900</p> <p>66. Date of next logicity: 12/31/1999</p> <p>67. Date of last rationality: 01/01/1900</p> <p>68. Date of next rationality: 12/31/1999</p> <p>69. Date of last logicity: 01/01/1900</p> <p>70. Date of next logicity: 12/31/1999</p> <p>71. Date of last rationality: 01/01/1900</p> <p>72. Date of next rationality: 12/31/1999</p> <p>73. Date of last logicity: 01/01/1900</p> <p>74. Date of next logicity: 12/31/1999</p> <p>75. Date of last rationality: 01/01/1900</p> <p>76. Date of next rationality: 12/31/1999</p> <p>77. Date of last logicity: 01/01/1900</p> <p>78. Date of next logicity: 12/31/1999</p> <p>79. Date of last rationality: 01/01/1900</p> <p>80. Date of next rationality: 12/31/1999</p> <p>81. Date of last logicity: 01/01/1900</p> <p>82. Date of next logicity: 12/31/1999</p> <p>83. Date of last rationality: 01/01/1900</p> <p>84. Date of next rationality: 12/31/1999</p> <p>85. Date of last logicity: 01/01/1900</p> <p>86. Date of next logicity: 12/31/1999</p> <p>87. Date of last rationality: 01/01/1900</p> <p>88. Date of next rationality: 12/31/1999</p> <p>89. Date of last logicity: 01/01/1900</p> <p>90. Date of next logicity: 12/31/1999</p> <p>91. Date of last rationality: 01/01/1900</p> <p>92. Date of next rationality: 12/31/1999</p> <p>93. Date of last logicity: 01/01/1900</p> <p>94. Date of next logicity: 12/31/1999</p> <p>95. Date of last rationality: 01/01/1900</p> <p>96. Date of next rationality: 12/31/1999</p> <p>97. Date of last logicity: 01/01/1900</p> <p>98. Date of next logicity: 12/31/1999</p> <p>99. Date of last rationality: 01/01/1900</p> <p>100. Date of next rationality: 12/31/1999</p>																																																																																																			

Board's Exhibit 8A to 8D

Board's 8A

Board's 8B

Board's 8C

Board's 8D

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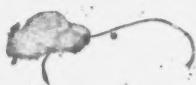
PERSONAL CHECK SHEET		ISSUED <input type="checkbox"/>	RECEIVED <input type="checkbox"/>	DATE <input type="checkbox"/>	AMOUNT <input type="checkbox"/>
EMPLOYER'S NAME	GLASS NUMBER	NATURE OF WORK	DATE	TO DEPARTMENT	DATE
Raymond Fahler	07-500	Reisch Mech. Sheet Met. Det.	1.301-8-7		
Beatrice Ave.					
Arrested L.A.					
Material Preparation		WKG			.00
CHECKED FOR MATERIAL		DATE CHANGE		DATE	
H. J. Wood		1.301-8-7		1.301-8-7	
Ed. Roney		1.301-8-7		1.301-8-7	

FEDERAL CIVIL SERVICE		NAME		DATE		1-18	
EMPLOYEE'S NAME	UNIT NUMBER	POSITION	DATE OF BIRTH	GRADE	CLASS	DATE	1-18
Mr. Jones	10-1-100	Assistant Clerk					
1114 Bond Street							
Washington, D.C.							
50	Postage Department						
INSTRUCTIONS TO EMPLOYER		INSTRUCTIONS TO EMPLOYEE		INSTRUCTIONS TO EMPLOYEE		INSTRUCTIONS TO EMPLOYEE	
To be filled by the employer		To be filled by the employee		To be filled by the employee		To be filled by the employee	
Signature of Employer		Signature of Employee		Signature of Employee		Signature of Employee	
Date		Date		Date		Date	
1-18		1-18		1-18		1-18	

[illegible]

CASE NO. 100-4470 100-4470 OFFICIAL EXHIBIT NO. 2470
 NO. PAGES 1 DISPOSITION 100-4470
 IN THE MATTER OF 100-4470
 DATE 4/12/43 WITNESS

CASE NO. _____
 NO. PAGES _____
 IN THE MATTER OF _____
 DATE _____
 WITNESS _____

Board's Exhibit 9**UNITED AUTOMOBILE AIRCRAFT AGRICUL-
TURAL IMPLEMENT WORKERS OF AMERICA
(UAW-CIO)****INTERNATIONAL HEADQUARTERS DETROIT MICHIGAN****R. J. THOMAS
International President****GEO. F. ADDES
International Sec. & Treas.****(SEAL)****Phone WATKINS 9-7812****IN REPLY REFER TO****CHARLES H. KERRIGAN, DIRECTOR
REGION NO. 9-A
1133 Broadway
New York, N. Y.****January 7, 1942****Republic Aviation Corporation
Farmingdale, New York****Gentlemen:**

This is to advise you that we represent a substantial number of your employees.

Pursuant to the provisions of the National Labor Relations Act, our members are entitled to recognition with reference to the straightening out of grievances and to matters relating to working conditions of these employees.

1828

Board's Exhibit 9

We request a conference for the purpose of discussing the establishment of such procedure at your earliest convenience. Thanking you for your prompt attention to this matter and awaiting your reply, I remain

Very truly yours,

CHARLES H. KERRIGAN
Charles H. Kerrigan
Regional Director

1829

CHK:je

AG:fw

nopwa #59.

Registered:

Request Return receipt

1830

Board's Exhibit 10A

(Seal of Republic Aviation)

REPUBLIC AVIATION CORPORATION**FARMINGDALE, LONG ISLAND, NEW YORK****Telephone Farmingdale 1100****February 12, 1943**

**Mr. John Larkin
National Labor Relations Board
120 Wall Street
New York, New York**

1832

Dear Mr. Larkin:

As you requested, I am attaching herewith a rough representation of the factory organization chart of our Farmingdale plant.

I hope that this will serve to replace the document which you found missing after your visit here.

Sincerely,

1833

**WILLIAM L. WILSON
William L. Wilson
Industrial Relations Director**

WLW:rs

1834

Board's Exhibit 11

WHAT'S COOKIN'?

REPUBLIC ACTIVITIES CALENDAR

APPROVED

R. A. C.

NOTICE

WATCH FOR THE BIG NEWS—

1835

ABOUT DOINGS ON TUESDAY, APRIL 6. An announcement will tell of a coming event which no RACer will want to miss. The presence of the brightly painted, "X Thunderbolt" on the Final Assembly Floor is a clue to an achievement of which all Republic men and women can be proud. *WATCH FOR THE BIG NEWS!*

REPUBLIC BOWLING SWEEPSTAKES

1836

Join the many RACers who bowl Saturday afternoon (after 1 P.M. for the night shift and after 4:30 P.M. for the day shift) in the Republic Bowling Sweepstakes at the Maywood Inn Recreation, Broadhollow Road, Farmingdale. Nine cash prizes and trophies will be awarded. The Hans E. Lasker Trophy will go to the factory man with the highest total pins including handicap. Handicaps are figured on 70 per cent of the difference between your average and the base average of 190. The entry fee is \$1.85 of which \$1.00 will go to the prize fund.

CAMERA CLUBS

RACers, both day and night shift, who are interested in joining Republic Camera Clubs are requested to fill out activities cards preparatory to organization meetings of these groups. With the outdoor recreation season approaching, the Camera Clubs will find interesting RACer projects.

EASTER DANCE AND FLOOR SHOW

The next big date on the RACer social calendar is Saturday, April 24, when the Easter Dance and Floor Show, sponsored by Inspection, Receiving and Shipping Departments, take place at the Hempstead Elks Club, Hempstead. Tickets are available at Inspection, and shop offices, Personnel Service Division, or see John Pierno, Receiving. Obtain your tickets earlier; the number available has been limited!

REPUBLIC-GRUMMAN BOXING SHOW

1838

Saturday, May 1, is tentatively set for the Republic-Grumman Boxing Show. Further details on the second meeting between the Thunderbolts and Wildcats will be announced shortly.

SOFTBALL TEAMS

All RACer softball enthusiasts, men and women, are requested to fill out activities cards and turn them into the Activities Section, Personnel Service Division.

AT THE REPUBLIC CLUBHOUSE

1839

(Conklin Street, Farmingdale)

MONDAY, APRIL 5 (Night Shift) 5 A.M. OPENHOUSE for all activities. (Day Shift) OPENHOUSE for all activities. (Night Shift) Tuesday, 5 A.M. MINSTREL REHEARSAL Full Cast.

TUESDAY, APRIL 6 (Day Shift) 7:30 P.M. ORCHESTRA, rehearsal on the Stage; GLEE CLUB, rehearsal in the Game Room. OPENHOUSE for other activities (Night Shift) Wednesday 5 A.M. MINSTREL REHEARSAL. Endmen and Comedians; OPENHOUSE for other activities.

1840

Board's Exhibit 11

WEDNESDAY, APRIL 7 (Day Shift) OPENHOUSE for all activities (Night Shift) THURSDAY 5 A.M., SOFTBALL spring workout; OPENHOUSE for other activities.

THURSDAY, APRIL 8 (Day Shift) OPENHOUSE for all activities. (Night Shift) FRIDAY 5 A.M. MENSTREL REHEARSAL, Full Cast; OPENHOUSE for all activities.

FRIDAY, APRIL 9 (Day Shift) OPENHOUSE for all activities.

1841

OTHER LOCATIONS

MONDAY, APRIL 5-6:15 P.M. BOWLING, Engineers League, Maywood Inn; 8:15 P.M., BOWLING, Flyer's League, Maywood Inn.

TUESDAY, APRIL 6-7:30 P.M., BOWLING, Final Assembly League, Maywood Inn.

SATURDAY, APRIL 7 10-1 P.M. REPUBLIC BOWLING SWEEPSTAKES, Maywood Inn Recreation; bowlers may roll off from 1 P.M. to 11:30 P.M.

1842

Ed. Reisman

Ed. Reisman, Activities Supervisor, Ext. 616
Oskar Frowein, Night Activities, Ext. 616

FRANK M. HARGREAVE
MANAGER, PERSONNEL SERVICE

Board's Exhibit 13

[SEAL OF REPUBLIC AVIATION]

● **REPUBLIC AVIATION CORPORATION****FARMINGDALE, LONG ISLAND, NEW YORK****Telephone Farmingdale 1100****January 20, 1943**

Mr. Charles H. Kerrigan
1133 Broadway
New York, New York

1844

Dear Mr. Kerrigan:

Your letter of January 7th was referred to me for reply. I am sorry that absence from the plant has prevented my acknowledging it sooner.

The policy of this Corporation in regard to handling of employee grievances is simple, clear-cut and well-defined, namely:

1. Any employee or group of employees is free to bring any matter which is of mutual concern to the attention of the management at any time.
2. Any employee who presents such a matter, whether criticism, suggestion or grievance, can be assured that he does not run any risk of losing his job by so doing. It will receive prompt attention.
3. Employees are encouraged to follow the regular factory organization lines of responsibility in bringing up such matters. This need not, however, prevent any employee from presenting his problem to any level of management he may choose in the first instance.

1845

1846

Board's Exhibit 13

The National Labor Relations Act states that "any individual employee or a group of employees shall have the right at any time to present grievances to their employer." The policy of the company as outlined above clearly is in accord with this provision.

1847

The fact that grievances have been and are continually being adjusted satisfactorily on the above basis is concrete evidence of the existing mutual confidence and understanding which is so essential in the war effort to assure maximum production.

Very truly yours,

A. L. Kress,
A. L. Kress,
Assistant to the President

k/m

1848

Board's Exhibit 14

1849

International Offices, Detroit, Mich.

Official Application for Membership

[UNION SEAL]

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT, & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO)

Name Sam Stone L. U. No.....

Address 1745-52 St City B'klyn State N. Y

Where Employed Republic How Long 6 Mo

1850

Class of Work Mechanic Dept. No. 50 Clock No. 882.

Present Rate of Pay 85¢ Shift Night

Were You Ever a Member of UAW-CIO Yes L. U. No.
212

If yes—what local

New ☐ Reinstated ☐ Amount Paid.....

Date 11-10-42 Presented by.....

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO)

1851

International Offices, Detroit, Mich.

L. U. No..... TEMPORARY RECEIPT

Received of..... Amt. \$:.....

Date:..... Received by.....

(This Receipt Should be Exchanged for Official Receipt
When Initialed.)

[UNION LABEL]

1852

[On Reverse Side of Card]

1853

I hereby designate, select and empower the International Union, United Automobile, Aircraft, & Agricultural Implement Workers of America (UAW-CIO), as my representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment; and I hereby revoke every selection or designation which in any manner may heretofore have been made by me, or any other representative for any of such purposes.

I further authorize the International Union, United Automobile, Aircraft, & Agricultural Implement Workers of America (UAW-CIO) to appear and act for me and in my behalf before any board, court, committee or other tribunal in any matter affecting my status as an employe or as a member of the International Union, United Automobile Aircraft, & Agricultural Implement Workers of America (UAW-CIO).

1854

I further specifically repudiate any organization which uses the name "International Union, United Automobile, Aircraft, & Agricultural Implement Workers of America" (UAW-CIO) but which is not affiliated with the CIO.

Applicant's Signature Sam Stone

GG No. 617679

GG No. 617679

Board's Exhibit 16

BB No. 133108

[UNION SEAL]

(on list—active)

—Official Application for Membership

International Union, United Automobile Workers of
America-CIO

International Offices, Detroit, Mich.

Name (Print) ROBERT KATZ

L. U. No.....

1856

Address 35 BROADWAY City HICKSVILLE State NEW YORK

Where Employed REPUBLIC AVIATION

How Long ONE YEAR

Class of Work SHEETMETAL Dept. No. 01 Clock No. 402

New ☐ Reinstated ☐ Amt. Paid.....

Date 1-30-42 Presented by G. White

[C I O Printed Across Face of Card]

INTERNATIONAL UNION, UNITED AUTOMOBILE
WORKERS OF AMERICA-CIO

1857

International Offices, Detroit, Mich.

BB No. 133108

L. U. No..... TEMPORARY RECEIPT

Received of..... Amt. \$.....

Date..... Received by.....

(This Receipt Should be Exchanged for Official Receipt
When Initialed.)

[UNION LABEL]

1858

Board's Exhibit 16

[On Reverse Side of Card]

I hereby designate, select and empower the International Union, United Automobile Workers of America, **AFFILIATED WITH THE CIO**, as my representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment; and I hereby revoke every selection or designation which in any manner may heretofore have been made by me, or any other representative for any of such purposes.

1859

I further authorize the International Union, United Automobile Workers of America, **AFFILIATED WITH THE CIO**, to appear and act for me and in my behalf before any board, court, committee or other tribunal in any matter affecting my status as an employe or as a member of the International Union, United Automobile Workers of America, **AFFILIATED WITH THE CIO**.

I further specifically repudiate any organization which uses the name "International Union, United Automobile Workers of America," but which is not affiliated with the CIO.

1860

Applicant's Signature Robert Katz

Respondent's Exhibit 3**CHEER UP!***there's good news—***UAW-CIO SEEKS
GRIEVANCE SET-UP FOR RACERS!**

Copy of Letter Sent to
YOUR MANAGEMENT & WAR LABOR BOARD
WASHINGTON, D. C.

1862

January 7, 1943

Republic Aviation Corporation
Farmingdale, New York

Gentlemen:-

This is to advise you that we represent a substantial number of your employees.

Pursuant to the provisions of the National Labor Relations Act, our members are entitled to recognition with reference to the straightening out of grievances and to matters relating to working conditions of these employees.

1863

We request a conference for the purpose of discussing the establishment of such grievance procedure at your earliest convenience. Thanking you for your prompt attention to this matter and awaiting your reply, I remain

Very truly yours,

CHARLES H. KERRIGAN
Charles H. Kerrigan
Regional Director, UAW-CI

1864

*Respondent's Exhibit 3***ATTEND YOUR MEETINGS!**

1st Shift workers Wednesdays
after work.

2nd Shift 5:p.m. Thursdays.

Fill out the Application below and mail to

UAW-CIO Organizing Committee, 380 Conklin Street
Farmingdale, New York—Tel. Farmingdale 1068

1865

Print Name

Address

Shift

Plant

Department

REPUBLIC ORGANIZING COMMITTEE UAW-CIO
380 Conklin Street
Farmingdale, New York

uopwa #59 cio

AG:fw

1866

#1

1/8/43

Respondent's Exhibit 4

Mr. Henry Albert

January 20, 1943

William L. Wilson

Sale of Tickets

I understand there has been some effort to sell tickets for the Volunteer Firemen's Dance in the factory. As you know, soliciting of this kind is contrary to regulations and it should be stopped. If the firemen wish to put the tickets on sale in the Personnel Office, we will be glad to arrange this.

1868

WILLIAM L. WILSON

WLW:ed

1869

870

Respondent's Exhibit 5**REPUBLIC AVIATION NEWS**

(Seal)

Vol. VI, No. 4

Friday, August 7, 1942

Farmingdale, Long Island, N. Y.

871

WEDNESDAY DEADLINE FOR INSURANCE OFFER*1,900 RACers Subscribe for Coverage
In Two-Week Drive*

If you aren't in Republic Aviation's Group Insurance Plan—which means protection-plus for you and your family—you have until next Wednesday midnight to get your application into the Personnel Office.

872

After Wednesday, the current campaign offer of the Connecticut General Life Insurance Co. will be withdrawn and all members of the organization will be required to present medical proof of their physical well-being before being accepted for insurance protection. During the drive, this requirement has been waived.

All other waiting-period and other restrictions likewise are pushed by the board until Wednesday. If a baby is coming, family insurance can be taken out today and hospital and other payments will be made tomorrow, if baby arrives then. Other family hospital benefits also are immediately effective.

Respondent's Exhibit 5

1873

Over 1,900 Sign

More than 1,900 RACers have taken measures to protect themselves against possible financial distress by subscribing to the Group Insurance Plan within the past two weeks, it was announced today.

The campaign is carried on through the timekeepers, although there is no personal solicitation. An explanatory booklet and applications, in addition to a letter from President R. S. Damon, have been distributed to all uninsured personnel. Signed applications are returned to the timekeepers. Applicants who want further information may obtain it from insurance company representatives in the Mezzanine.

1874

If the original application form has been lost, a timekeeper, shop clerk or office head will supply another.

Value is Shown

The value of the insurance was demonstrated amply during July, when the total paid out to subscribers was \$10,255.14. The insurance costs from 40 cents to 95 cents for individual protection and from 65 cents to \$1.25 per week for protection for the individual and his family. The cost is determined by the weekly base salary and Republic pays a portion of the bill.

1875

1876

Respondent's Exhibit 8**PERSONNEL CHANGE REQUEST**Release ☒

Effective Date 2-4-43 Hr. 9 PM

Employee's Name—Arthur J. Clements
 Jackson Ave.
 Seaford, N. Y.

Clock Number—01-1501

1877

Nature of Work—No Gas Book

Persons—1

Number—WKB

Reason for Request—Release—To Be Replaced ☒

Remarks: Quit at own request, not to be rehired.

Approved—Ford C. Kipp

Signed—Rafert

Date—2/4/43

1878

Personnel or Employment Copy

REPUBLIC AVIATION CORPORATION

**Intermediate Report of Trial Examiner, Josef L.
Hektoen, Dated May 21, 1943**

1879

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TRIAL EXAMINING DIVISION**

WASHINGTON, D. C.
Case No. 2-C-4826

**In the Matter of
REPUBLIC AVIATION CORPORATION
and**

1880

**INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO**

Mr. MARTIN ROSE, for the Board.

**DONOVAN, LEISURE, NEWTON & LUMBARD, by
MR. GEORGE S. LEISURE, MR. J. EDWARD
LUMBARD, JR., MR. GRANVILLE WHITTLESEY,
Jr., and MR. FREDERICK M. DAVENPORT, JR.,
of New York, N. Y., and MR. JOHN J.
RYAN, of Farmingdale, N. Y. for the re-
spondent.**

1881

**MR. BENJAMIN RUBENSTEIN, of New York,
N. Y., for the Union.**

INTERMEDIATE REPORT

Statement of the Case

Upon a fourth amended charge filed on March 24, 1943,
by International Union United Automobile, Aircraft &
Agricultural Implement Workers of America, UAW-CIO,

1882

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1883

herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York City), issued its complaint dated March 24, 1943, against Republic Aviation Corporation, Babylon Township, Suffolk County, New York, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent and the Union.

1884

With respect to the unfair labor practices, the complaint alleged in substance that the respondent: (1) on January 20, 1943, discharged Sam Stone, on January 23, 1943, discharged Robert Katz, on January 26, 1943, discharged Robert Bobrow and Raymond C. Kahler, and thereafter refused to reinstate them, because of their union membership and activity; (2) on and after March 1, 1942, vilified, disparaged, and expressed disapproval of the Union, inquired of employees as to their union affiliations, urged and warned them not to join or assist the Union, engaged in surveillance of union members, and since January 1943 prohibited union solicitation by employees at its plant on their own time and the wearing of shop steward buttons by employees on its premises, in order to discourage membership in the Union and to frustrate the self-organization of its employees; and (3) by such acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On April 15, 1943, the respondent filed its answer admitting certain of the allegations of the complaint with respect to the nature of its business and denying the commission of any unfair labor practices.

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1885

Pursuant to notice, a hearing was held at New York City from April 15 through 22, 1943, before the undersigned, Josef L. Hektoen, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties. At the close of the Board's case, counsel for the respondent moved to dismiss the complaint. The undersigned granted the motion insofar as the complaint alleged that the respondent had vilified and disparaged the Union, and denied it in all other respects. At the close of the hearing, the undersigned allowed the motion of counsel for the Board to conform the complaint to the proof in formal matters and took under advisement the motion of counsel for the respondent to dismiss the complaint; it is now denied. At the close of the hearing, all parties argued orally before the undersigned and counsel for the respondent subsequently filed a brief with him.

1886

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

1887

FINDINGS OF FACT :

I. THE BUSINESS OF THE RESPONDENT

The respondent, Republic Aviation Corporation, is a Delaware corporation having its principal office at Wilmington, Delaware. Its plant involved in this proceeding is located in Babylon Township, Suffolk County, New York. It is there engaged in the manufacture and sale of military aircraft. During the 12-month period to April 15, 1943, it bought aluminum and steel, the principal raw materials used by it, having a value in excess of \$100,000, approxi-

1888

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mately 50 percent thereof being shipped to it from points outside the State of New York. During the same period, the value of its finished products exceeded \$100,000, approximately 50 percent thereof being shipped by it to points outside the State of New York.

The respondent admits that it is engaged in commerce, within the meaning of the Act.

1889

II. THE ORGANIZATION INVOLVED

International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, is a labor organization affiliated with the Congress of Industrial Organizations. It admits to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. Chronology of Events

1890

The Union began organization of the respondent's employees during 1942, but its campaign appears to have been inactive until early in January 1943, when it began distributing literature outside the plant, soliciting membership applications, and holding meetings.

On January 7, 1943, Charles Kerrigan, union regional director, wrote the respondent that the Union represented a substantial number of employees and requested a conference to establish a grievance procedure for them.

On January 13, the Union held a meeting at which employees Stone, Katz, Bobrow, and Kahler were designated shop stewards. Employee Leo Rosenkrantz was also designated a steward at or about this time.

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1891

On January 14, Stone, Katz, and Rosenkrantz began wearing their steward buttons in the plant.¹ On January 15, William Wilson, director of industrial relations, telephoned his superior, Albert L. Kress, assistant to the president, who was out of town at the time, and told him of this development. Kress told Wilson to let the matter rest until his return to the plant.

On January 19, Kress returned to the plant and on January 20, replied to the Union's letter stating that the respondent's grievance procedure operated satisfactorily and was in conformity to the requirements of the Act.²

1892

On January 20, the respondent discharged Stone for the stated reason that he solicited union memberships in the plant on his own time despite warnings.

On January 23, the respondent discharged Katz purportedly because he persisted in wearing his steward button in the plant,³ and on January 26, it discharged Bobrow and Kahler purportedly because they likewise wore their steward buttons in the plant after being warned not to do so.

B. THE DISCRIMINATORY DISCHARGES; INTERFERENCE, RESTRAINT, AND COERCION

1893

1. Stone

Sam Stone began work for the respondent on July 29, 1942. At the time of his discharge on January 20, 1943,

¹ They bore the device: "UAW-CIO Steward."

² The meeting requested by the Union to discuss the procedure was never held.

³ On January 22, Kress and other officials of the respondent interviewed Rosenkrantz and obtained his promise to cease wearing his offending steward button.

1894

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he worked in the fuselage department under Sectional Supervisor Ott Bofinger. The respondent never criticized his work.

Stone joined the Union on November 10, 1942, became a volunteer organizer, distributed leaflets outside the plant, solicited memberships in the Union among the employees in the plant on his own time, and became a steward on January 13, 1943.

1895

About January 8 or 10, Bofinger received reports from Foreman Wesley Sargent that Stone was soliciting memberships in the plant by passing out union application cards to fellow employees. The evidence clearly shows, and the undersigned finds, that Stone's activities were entirely confined to his own time. Bofinger told Sargent to observe Stone's activities and report to him. On the same day, Bofinger reported Stone's activity to Wilson, who told him it violated the respondent's rule against solicitation⁴ and instructed him to report like occurrences in the future. Bofinger received further reports regarding Stone during the next few days and relayed them to his superiors.

1896

As related above, Stone began wearing a steward button at work on January 14. On January 15, Sectional Supervisor John Doglione asked Bofinger for several employees to help him in his department. Bofinger took Stone and employee Lester Jones⁵ to Doglione. Doglione, according to Stone's undenied testimony which the undersigned credits, saw Stone's steward button and said, "—I

⁴ The rule, which appeared in the handbook given all employees by the respondent, read: "Soliciting of any type cannot be permitted in the factory or offices."

⁵ Jones wore no union button of any kind.

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1897

don't want to have him [Stone] in my department. I have enough of this going around here." Jones remained with Doglione and Bofinger took Stone back to the fuselage department. On their way, Bofinger, according to Stone, said, "It seems that you fellows are not making any headway whatsoever here." Stone replied that the Union was doing well and that he felt the respondent "should take a different attitude towards this whole business" and cease intimidating union members. Bofinger, although he admitted talking to Stone and that they discussed Doglione's rejection of Stone, denied the remarks attributed to him and testified that the Union was not mentioned. In the light of all the circumstances revealed in the record, and because he found Stone a credible and convincing witness while he found Bofinger evasive and less than frank, the undersigned is persuaded and finds that the conversation occurred substantially as testified by Stone.

1898

• Later the same day, Bofinger observed Stone hand out union application cards in the plant during the lunch hour. After lunch, he called Stone to his office, read him the respondent's rule against solicitation, and warned him that he would be discharged for its future violation. Stone stated that his activities were protected by the Act and that he would continue them. Immediately after the interview, Bofinger prepared a request for Stone's release.⁶ Factory Manager Hans E. Lasker refused to approve it and instructed Bofinger, who had not witnessed any violation of the rule by Stone after his warning, to observe Stone himself.

1899

Stone continued soliciting on his own time and on January 19, Bofinger again requested his release. Lasker and

⁶ Bofinger explained that he felt Stone would not obey his warning in future and that he promptly requested his release for past soliciting.

1900

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Kress, assistant to the president, who had returned to the plant that day, instructed Bofinger that he should himself observe Stone in the act of soliciting before Stone could be released. Lasker, however, at this time signed a slip for Stone's release to become effective when Bofinger obtained personal knowledge of his soliciting. On January 20, Bofinger observed Stone solicit during the lunch hour and thereupon discharged him.⁷

1901

Conclusions

The Board contends that the respondent's rule against any solicitation on its premises is inherently unreasonable and that even if otherwise not subject to criticism, was discriminatorily applied to Stone. The respondent, on the other hand, takes the position that the rule is reasonable and that it was impartially applied.

1902

The rule was first published in the employee's handbook in March 1941, well before any union activity is shown to have occurred at the plant. The evidence shows that the respondent, through its industrial relations office, prohibited, and when informed thereof, stopped various solicitations and collections in the plant such as for lotteries, benevolent funds, athletic and social events not approved by the management, blood donations, and the like. Exceptions were made, however, in the cases of Red Cross and war bond drives, collections for Republic Service Organization,⁸ the American Legion, and the sale of tickets to respondent

⁷ Following its discharge of Stone, the respondent in late January or early February 1943, amplified its rule against soliciting to read: "Soliciting of any type, at any time, for any purpose is not permitted upon the company's premises."

⁸ An organization similar to United Service Organization for the benefit of service men in the environs of the plant. Buttons indicating contributions to the R.S.O. were issued and worn in the plant.

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1903

approved and supervised athletic and social events.⁹ In no case was personal solicitation or collection by and among the employees officially permitted. The record reveals, however, that much person to person solicitation occurred in the plant both during working hours and otherwise, often with the knowledge and participation of supervisors.¹⁰ Nevertheless, with the exception of Stone, no employee, so far as is disclosed by the record, was ever discharged or disciplined by the respondent for such breaches of its rule.¹¹

Bofinger testified that he did not consider activity such as securing donations to the Fuselage Benevolent Association to constitute solicitation, within the meaning of the rule. Asked why he instructed Sargent to watch Stone's activities, Bofinger testified that he did so because Stone was indulging in "something I never saw before." He further testified that although he was not concerned whether other forms of solicitation in the plant were violative of the rule, he was anxious to have the question answered in the case of Stone's solicitation for the Union.

1904

⁹ Such projects were announced on plant bulletin boards, over the public address system, and in the plant newspaper. Facilities for receiving contributions in the plant were provided by the respondent and tickets were exposed for sale by it in the shop offices.

1905

¹⁰ Sectional Supervisor Bofinger participated in the activities of the Fuselage Benevolent Association, an organization for the relief of distress among the employees in his department which functioned therein to the time of the hearing. When the evidence disclosed this fact, Wilson asked him to disband it.

¹¹ Witnesses called by the respondent testified that all other employees ceased their activities upon notice from the management. Wilson testified that as to a leadman who was identified as having approached an employee while at work and advised him to fill out an application for group insurance, he would not discharge him for so doing. " * * * but would suggest to him that he not do it, we wouldn't want him to persist in it."

1906

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1907

After Wilson told him that Stone's activities violated the rule, Bofinger did not so inform Stone but instead permitted him to continue soliciting for the Union for about a week. During that time he daily reported to Superintendent Wheeler and other officials regarding Stone, and on the day Stone wore his steward button to work, for the first time warned him respecting his activities and promptly thereafter took steps to secure his discharge because of the very activities Stone had indulged in during Bofinger's silence. His request was then refused, but 4 days later when he reiterated it, was granted to become effective when Bofinger himself witnessed solicitation by Stone. During the lunch hour on the next day, January 20, Bofinger took occasion to do so and Stone left the plant.

1908

It is undisputed that while solicitation by other employees for the various activities referred to above occurred both on company time and their own, Stone's efforts for the Union were strictly confined to his own time. Under these circumstances, the respondent's avid interest in Stone's doings, its entrapment of him during the week of Bofinger's silence, and its eventual ousting him from the plant can only be attributed to its bias against him on account of his union activities. It is true that he persisted in his activities after Bofinger's warning, but the undersigned from the entire record is convinced and finds that had he not been engaged in working for the Union, the respondent, had it seen fit to discipline him in any degree, would not have imposed on him the most severe penalty at its disposal. The evidence discloses that employee Arthur Clements voluntarily resigned his employment during February 1943, because, as he told Supervisor James Craig, he could not afford to meet all the money demands made upon him at the plant for various undertakings by other employees, some of them supervisory. Craig did not seek out

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1909

the offenders but confined himself to informing his foremen that solicitation must stop. Furthermore, Clements credibly testified and the undersigned finds, that when Craig urged Clements to reconsider his decision to resign and suggested as to those who importuned Clements while he was at work, that he "Go back and give a buck and forget it."¹²

The undersigned finds that respondent, by discriminating against Stone in the application of its rule against solicitation upon its premises, has acted in contravention of Section 8 (3) of the Act.

1910

But although it be assumed, *arguendo*, that the rule was fairly applied to Stone, the respondent's contentions respecting his discharge must nevertheless fail. Witnesses for the respondent explained that the purpose of the rule was in the main to protect employees from personal insistence that they contribute to or become members of various projects and organizations, no matter what their motive or character. Wilson testified that it was also designed to prevent what he described as the "almost certain" invasion of working time by soliciting begun on the employees' free time, as well as "disharmony which will impede the work of the group."

1911

The policy of the United States, as set forth in the Act, is to encourage the practice and procedure of collective bargaining. Since employees can assert their right to collective bargaining only after self-organization, the policy is also to protect employees in their exercise of "full freedom of association, self-organization, and designation of representatives of their own choosing."

¹² Craig did not directly deny the remark attributed to him by Clements, but merely denied that he told him to make the contribution in question.

1912

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The Act does not sanction interference by the Board with the normal right of the employer to select and discharge his employees except where he uses that right in a manner which intimidates or coerces them with respect to their self-organization and representation.¹³

1913

As construed by the respondent, its rule against solicitation operates to prohibit its employees from engaging in organizational activity while on its premises. The evidence indicates that many of its employees live long distances from the respondent's plant and that their homes are scattered over a wide area. As Bobrow stated to the respondent on January 26, " . . . in these plants where transportation is particularly limited through gas rationing and transportation is made very difficult and workers come from a radius of anywhere from 10 to 50 miles to work . . . , it is reasonable to expect that the shop would be the natural place for workers to talk to one another and persuade one another to join the union." The evidence also indicates that most if not all of the employees eat their lunch at the plant.

1914

Thus, under the conditions obtaining in January 1943, the respondent's employees, working long hours in a plant engaged entirely in war production and expanding with extreme rapidity, were entirely deprived of their normal right to "full freedom of association" in the plant on their own time, the very time and place uniquely appropriate and almost solely available to them therefor. The respondent's rule is therefore in clear derogation of the rights of its employees guaranteed by the Act.

The respondent advances no cogent reason nor special circumstance in justification of its abrogation of its em-

¹³ *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1.

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1915

ployees' right to self-organization and of their normal freedom of speech and action by the act of coming upon its premises. There is no evidence or claim that the activities of the Union's proponents in the plant resulted in commotion or disturbance endangering or affecting safety or production. Its position that employees should be protected from reiterated demands upon them for contributions and the like is normally perhaps a reasonable one. But when such "protection" operates to render the beneficial purposes of the Act substantially impossible of achievement, the rule becomes an obviously unreasonable one.

1916

The rule therefore clearly constitutes an unreasonable impediment to union organization and interferes with, restrains, and coerces employees of the respondent in the exercise of rights guaranteed by the Act.¹⁴

It follows, and the undersigned finds, that the respondent has discriminated against Stone in regard to the hire

¹⁴ *Matter of Carter Carburetor Corporation, etc.*, 48 N.L.R.B. No. 48; *Matter of The Denver Tent and Awning Co., etc.*, 47 N.L.R.B. No. 76. See also the decisions of the National War Labor Board in *Alfred Chemical & Dye Corp., etc.*, 12 L.R.R. 215; *General Chemical Co., etc.*, 11 L.R.R. 95. Cf. *Midland Steel Products Company v. N.L.R.B.*, 113 F. (2d) 800 (C.C.A. 6) decided June 27, 1940. In that case the Court found to be reasonable a rule similar to that invoked by the respondent in the instant case. The acts in litigation occurred in 1937 and the plant was situated in Cleveland, Ohio. Here, as is revealed by the evidence, the plant is located on Long Island, not in or near a city, the employees live long distances therefrom and scattered throughout a very large area, transportation is difficult, and the normal peace-time use of automobiles is drastically curtailed. Additionally, the plant is solely engaged in the production of the essential tools of war and its schedules are necessarily at a peak. These factors, absent in the *Midland* case, create a state of facts quite different from that which there obtained. The undersigned, therefore, does not consider the *Midland* case a precedent applicable to the instant proceeding.

1917

1918

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and tenure of his employment, thereby discouraging membership in a labor organization, and thereby, and by prohibiting union solicitation in its plant by employees on their own time, by the acts and statements of Doglione and Bofinger, and by the surveillance of Stone, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Katz, Bobrow, and Kahler.

1919

Robert Katz began work for the respondent on January 13, 1941. He received all the regular raises as well as a 10-cent per hour merit raise during the early part of January, and when discharged on January 23, 1943, was working in the primary assembly shop under Supervisor Bondy.¹⁵

Katz joined the Union on January 30, 1942, worked as a member of its organizing committee, distributed leaflets, and solicited memberships among the employees. On January 12, 1943, he showed Bondy his voluntary union organizer's card and protested that he was being "hounded" by his superiors because he was a strong union advocate.¹⁶ Bondy first stated that Katz had a right to do as he wished with respect to the Union but returned a short time later and asked Katz, "What do you expect to get out of a union? What can a union do during war time?" Katz replied at length and stated that through a union the employees could obtain adjustment of grievances, improve their working conditions and morale, and produce more goods for the war effort. Katz also outlined a number of grievances to Bondy, including late notification for Sunday work. Bondy replied that when Sunday work was neces-

1920

¹⁵ Spelled Bonde in the respondent's brief.

¹⁶ These findings are based upon Katz's testimony. Bondy did not testify.

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1921

sary the employees should be notified the Thursday preceding.

On January 13, Sectional Supervisor Doglione called Katz to his office, told him he had received certain complaints against him, and that he understood Katz wanted Thursday rather than Sunday off. Katz protested that he was doing his work properly, explained that any absences from work were necessitated by his need for tools or parts, and clarified Doglione's misunderstanding respecting Sunday work. Doglione replied, "Well, if I hear any more complaints about you I will fire you on the spot even if you have been here a while." Katz stated that he was a union man and would organize on his own time, and that the Union wanted a grievance machinery as outlined in Kerrigan's letter to the respondent and reprinted in the form of a union leaflet which he showed Doglione. The conversation, however, ended amicably.

1922

On January 14, Katz wore his steward button in the plant.¹⁷ About 3 p.m., Doglione told Katz, "I am releasing you * * * You have been loafing on the job." Katz stated that he had expected such result from his wearing of the button. After Doglione left, Katz inquired of Foreman Zilensky respecting the complaints against him mentioned by Doglione. When Zilensky told him that two supervisors had made complaints but refused to inform Katz what they were, Katz said Zilensky was lying. Zilensky replied, "Look what you are doing, going around agitating and, causing a lot of trouble."¹⁸

1923

At 4:30 p.m. the same day, Katz was called to Factory Manager Lasker's office, Superintendent Bruno and Henry

¹⁷ As related above, he became a steward on January 13.

¹⁸ Katz's testimony. Zilensky did not testify.

1924

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1925

J. MacDonald, Lasker's assistant, also being present. Lasker told Katz that he understood he was in trouble and that because he was one of the older employees in point of service, Lasker wanted to investigate the matter before approving Doglione's request for his release. The talk turned to union solicitation in the plant, Lasker, according to Katz, stating that it was against the respondent's rules and that employees were also forbidden to talk of the Union in the plant, but that "You can wear any kind of union button, any kind of CIO button, in any amount you want to."¹⁹ When the meeting closed, Katz returned to work. Lasker testified that the meeting occurred on January 13 and explained that he placed it on that day because of a notation made on the following day by his secretary in her notebook, and that he recalled that that day was January 14. MacDonald, on the basis of Lasker's testimony, which he heard, also placed the meeting on January 13. Neither Bruno nor Lasker's secretary was called to the stand. Doglione placed the incident "around the middle of January." Lasker destroyed the request for Katz's release on the day in question. Both Lasker and MacDonald also testified that there was no talk of union buttons at the meeting, that Katz did not wear a steward button, and that Lasker did not say that talk of the union in the plant was forbidden.

1926

Katz was an unusually articulate witness and readily and convincingly narrated the somewhat involved events leading to his discharge. He was definite on dates and with the exception of that in question, was fully corroborated as to those respecting which he testified. Lasker, on the other hand, was not definite and was a less convincing witness

¹⁹ Including, apparently, a steward button such as Katz testified he was then wearing.

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1927

than Katz. MacDonald merely parroted Lasker's testimony.

In the light of all the circumstances revealed by the record and upon the credible testimony of Katz, the undersigned is persuaded and finds that the interview took place on January 14, 1943, that Katz wore his steward button at the time, and that Lasker made the remarks attributed to him by Katz.

On January 22, Katz was called to a meeting of Kress, Lasker, and Doglione in the respondent's office building. Lasker stated that he understood Katz had requested permission to see him and that the management wished to discuss the union situation with him "and possibly smooth it over." Kress stated that the purpose of the respondent's rule against solicitation was to minimize "disruption" in the plant. Katz replied that as applied to union solicitation, the rule contravened the provisions of the Act. Kress thereupon stated that there was no objection by the respondent to its employees' talking about the Union, but that the rule forbade their asking anyone to join it. Kress further told Katz that wearing a steward button, absent recognition by the respondent of the Union as the representative of the employees, amounted to a misrepresentation of the existing facts and asked Katz to remove his button. Katz replied that he questioned Kress's statement but that he would remove it until he had opportunity to satisfy himself as to his "right" to wear it, and that if he found that he was within his rights in doing so, would resume it. Lasker warned him that if he did so he would be discharged, and instructed Doglione to dismiss him in the event that he did wear it.

1928

1929

That evening Katz inquired of the Union respecting the matter and the next day, January 23, again wore the of-

1930

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fending button in the plant. Doglione, pursuant to Lasker's order of the day before, released Katz that afternoon, told him he was a good worker and that he was sorry to see him go, and added, "I sure hope you don't stick out your neck for the other guys."

Robert Bobrow began work for the respondent in April 1942, and when discharged on January 26, 1943, was working in the jig shop. He joined the Union on April 27, 1942, was chairman of its organizing committee, distributed leaflets outside the plant, and on January 13, 1943, was chosen steward for the entire plant. He first wore his steward button in the plant on January 25. On the morning of that day, Foreman Stanley Nepsee told him to stay at his bench and not to mingle with the other employees. When Bobrow asked him if he had done anything in the plant that would warrant complaint about him from Nepsee, the latter replied, "... I am not saying you are guilty of these things. I just want you to follow these instructions from now on."²⁰

1931

Raymond Kahler began work for the respondent on January 21, 1942, joined the Union on October 14, 1942, was a member of its organizing committee, became a steward on January 13, 1943, and first wore his steward button in the plant on January 26. On that day, Leadman Harry Lebair, who testified that several employees had told him of Kahler's button, asked Kahler, according to the latter, if he was serious about "this business." Kahler replied that he was. Lebair denied questioning Kahler in this way, but testified that he was curious about the button and asked Kahler what it "stood for" and that Kahler answered that stewards settled grievances. Lebair also testified that he asked Supervisor Rudy Belkau what he "should do about it" and that Belkau and Sectional Supervisor Edward Romeo told him to do nothing and "just carry on." Lebair fur-

1932

²⁰ Bobrow's testimony. Nepsee was not called as a witness.

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1933

ther testified that he had seen an ordinary union button being worn by employee Clarence Tomford late in December or early January 1943. Tomford, called in rebuttal by the Board, credibly testified that he wore a union button for the first time on January 28 or 29, 1943. The undersigned finds that Lehair spoke to Kahler as the latter testified.

On January 26, Bobrow and Kahler asked Kress for an interview respecting the discharges of Stone and Katz, the matter of wearing steward buttons and soliciting for the Union on the employees' own time in the plant, and the adjustment of several grievances. Kress was busy but recalled them shortly thereafter, Kress, Lasker, and Wilson being present. Kress restated the respondent's position respecting soliciting in the plant, and with reference to steward buttons, informed the union representatives, according to his own testimony, that " * * * with all the developments in labor organization in recent years, that a steward had gotten to certain pretty definitely and clearly defined functions and responsibilities in the operation of a union agreement, and that since there was no union agreement that obviously they could not have those duties and responsibilities" in the respondent's plant; that the respondent looked "on the wearing of steward buttons as a misrepresentation; that for all we knew there might be other organizations trying to organize our employees; that if we permitted them to wear a steward's button these other organizations might come back and want the same right, and since it was quite clear to [Kress] from discussions * * * that one of the specific functions they were setting themselves up to handle, had to do with grievances and * * * [the respondent] had a grievance procedure" and therefore could not "allow the mushrooming up of various other organizations who might want the same shop stewardship in the matter of dealing with grievances," and that he

1934

1935

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"thought there might be other organizations and that they might want to wear steward's buttons." The union spokesmen asked that Stone and Katz be reinstated but were told that that was impossible. Bobrow and Kahler were warned that if they persisted in wearing steward buttons they would be discharged. They continued to do so after the meeting and about an hour later the respondent discharged them.

Conclusions

1937 The Board contends that stewards are union officers and that steward buttons are merely their badges of office which employees who are stewards are entitled to wear. The respondent contends that absent recognition by the employer of the union as the representative of its employees, steward buttons constitute misrepresentation to the employees in the plant of the existing facts and that under such circumstances employees who persist in wearing steward buttons may appropriately be discharged.

1938 The right of employees to wear buttons showing their union affiliation upon their employer's premises is established by the courts²¹ and is not challenged by the respondent. The respondent's position with respect to steward buttons was formulated by Kress in consultation with other members of the respondent's management, upon his return from a three weeks' absence from the plant. During that time the Union had renewed its drive, Stone had engaged in the activities for which he was subsequently discharged, and Katz and Rosenkrantz had begun wearing steward buttons in the plant.²² Kress announced his interdiction

²¹ *N.L.R.B. v. Waterman Steamship Corporation*, 309 U. S. 206; *Triplex Screw Company v. N.L.R.B.*, 117 F. (2d) 858 (C.C.A. 6)

²² As found above, Lasker voiced no objection to them to Katz on January 14, but in fact approved of their being worn.

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1939

against steward buttons to Katz and Rosenkrantz on January 22, and the latter removed his button. Katz, who by his protests to Bondy and Doglione's effort to discharge him, was known to the respondent to be a strong union advocate, refused and was ousted on January 23. On January 24, refused and was ousted on January 23. On January 25, quarantined in the plant by Foreman Nepsee, and on January 26, when Kahler also wore his,²³ both were discharged. These circumstances, together with those surrounding Stone's discharge found above, unmistakably demonstrate the respondent's strongly anti-union sentiment and its fixed purpose to prevent the Union's obtaining a foothold in the plant. They combine to convince the undersigned, and he finds that the respondent's policy denying to its employees the right to wear steward buttons was merely an expedient formulated to meet the exigencies of the moment and constituted a part of its offense against the inroads of the Union in its plant.

1940

The respondent adduced no evidence to buttress its contention that the steward buttons constituted misrepresentation in that they purportedly indicated to its employees that the Union and the respondent were operating under a contract recognizing the Union as their representative. The undersigned does not consider it reasonable to assume that the respondent's employees were not fully aware that no contract was in existence at the plant, nor, in the absence of any showing to that effect, that they construed the steward buttons to demonstrate the contrary. To so assume constitutes an unwarranted traducement of their awareness and intelligence. The undersigned finds the respondent's contention in this regard to be without merit.

1941

²³ Leadman Lehair, as related above, asked Kahler if he was serious about "this business" and immediately sought advice as to what he "should do about it."

1942

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He also, and for the same reasons, finds its contention that by permitting the buttons to be worn, the respondent would indicate a deviation by it from "the strict neutrality and impartiality necessary to accord to its employees an uninfluenced right to determine their Union affiliations," to be without merit.

1943

In the *Armour* case,²⁴ the company discharged an employee because he persisted in wearing a steward button in the plant after being instructed not to do so. It justified its action upon the assertion that the wearing of the button was causing confusion and commotion in the plant and that "there was very likely to be trouble, friction, fights, and even riots." Holding that although the evidence showed that "some confusion" occurred in the plant in consequence of the button's being worn, it failed to show any basis for the fear asserted by the respondent, the Board concluded "... that Davis as a steward in the United was entitled to wear the button indicating his rank and function in the labor organization" and that the respondent acted in contravention of the provisions of the Act in discharging him for so doing.

1944

The respondent seeks to distinguish the *Armour* case from the instant one and points out that in the former, the steward button bore the legend: "Packing House Workers Organizing Committee, C.I.O., Steward, Pay Your Dues," arguing that since it appeared therefrom that the Union was in an organizational stage, the button did not misrepresent the condition obtaining in the plant. The undersigned finds this contention to be without merit. In both cases the buttons bore the actual name of the union involved

²⁴ *Matter of Armour & Company, etc.*, 8 N.L.R.B. 1100. The question of steward buttons appears to have had the attention of the Board in no other case and the question has not been litigated in the courts.

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1945

and the *Armour* decision does not disclose that it was in any degree predicated upon the distinction sought to be made by the respondent.

The undersigned therefore concludes and finds that under all of the circumstances revealed by the record, Katz, Bobrow, and Kahler were justified in refusing to obey the respondent's order that they refrain from wearing their union badges of office in the plant and that by discharging them because of such refusal, the respondent discriminated against them in regard to the hire and tenure of their employment, thereby discouraging membership in the Union, and has thereby, and by prohibiting the wearing of shop steward buttons by employees on its premises, and by the acts and statements of Bondy, Doglione, Zilensky, Nepsee, and Lehair, interfered with, restrained, and coerced its employees in their exercise of the rights guaranteed in Section 7 of the Act.

1946

Since it does not appear that the respondent has urged and warned its employees not to join or assist the Union, the undersigned will recommend that the complaint, insofar as it so alleges, be dismissed.

1947

*IV. The Effect of the Unfair Labor Practices
Upon Commerce*

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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V. The Remedy

Having found that the respondent has engaged in and is engaging in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action which the undersigned finds to be necessary to effectuate the policies of the Act.

It has been found that the respondent discharged and thereafter refused to reinstate Sam Stone, Robert Katz, Robert Bobrow, and Raymond Kahler for the reason that they and each of them joined and assisted a labor organization and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection. It will therefore be recommended that the respondent offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges. It will be further recommended that the respondent make them whole for any loss of pay they may have suffered by reason of the discrimination against them by the payment to each of them of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings²⁵ during said period.

²⁵ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U. S. 7.

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1951

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, is a labor organization, within the meaning of Section 2 (5) of the Act.

1952

2. By discriminating in regard to the hire and tenure of employment of Sam Stone, Robert Katz, Robert Bobrow, and Raymond Kahler, thereby discouraging membership in International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices; within the meaning of Section 8 (1) of the Act.

1953

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not engaged in unfair labor practices, within the meaning of Section 8 (1) of the Act, by vilifying or disparaging the Union, or by urging and warning its employees not to join or assist the Union.

1954

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RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Republic Aviation Corporation, Babylon Township, Suffolk County, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

1955

(a) Discouraging membership in International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, or any other labor organization if its employees, by discouraging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

1956

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Sam Stone, Robert Katz, Robert Bobrow, and Raymond Kahler immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges;

(b) Make whole said employees for any loss of pay they may have suffered by reason of the respondent's discrimination against them, in the manner set forth in the Section entitled "The remedy," above;

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1957

(c) Rescind immediately the rule against solicitation insofar as it prohibits union activity in the plant except during working hours;

(d) Post immediately in conspicuous places throughout its plant in Babylon Township, Suffolk County, New York, and maintain for a period of a least sixty (60) consecutive days from the date of posting, notices to its employees stating that: (1) the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1.(a) and (b) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of these recommendations; and (3) that the employees of the respondent are free to become and remain members of International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

1958

(e) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

1959

It is further recommended that the complaint, insofar as it alleges that the respondent has engaged in unfair labor practices, within the meaning of Section 8 (1) of the Act, by vilifying or disparaging and by urging and warning its employees not to join or assist the Union, be dismissed.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the

1960

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foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

1961

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board—Series 2—as amended, effective October 28, 1942, any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

1962

Joseph L. Hektoen
Joseph L. Hektoen
Trial Examiner

Dated: May 21, 1943

1963

Petitioner's Exceptions to Intermediate Report**UNITED STATES OF AMERICA****BEFORE THE****NATIONAL LABOR RELATIONS BOARD****WASHINGTON, D. C.****Case No. C-2621**

In the Matter of

1964

REPUBLIC AVIATION CORPORATION,**and****INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-
CIO.**

The respondent, Republic Aviation Corporation, makes exceptions to the Trial Examiner's Intermediate Report upon the evidence, as follows:

1965

SECTION III A

1. Exception is taken to the finding at page 3, fol. 5, that the Union's organizing campaign was inactive until early in January 1943.

Katz and Bobrow testified that the organizing drive "restarted" in October 1942 (Katz 205, 206; Bobrow 308). Lasker testified that the Union was engaged in distributing literature outside respondent's plant in the fall of 1942. (611)

1966

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2. With respect to the finding at page 3, fol. 15, exception is taken to the failure to report that the so-called "shop stewards" were not members of any chartered union local, but merely belonged to an "organizing committee" of some 15 to 40 members (Katz 145, 235; Bobrow 275, 307; Kahler 372).

1967

3. With respect to the finding at page 3, fols. 25-30, exception is taken to the failure to report that in respondent's reply to the Union's letter, respondent therein outlined the nature and method of operation of its then-existing grievance procedure (Bd. Exh. 13).

4. Exception is taken to the finding at page 3, fols. 35-40, that respondent discharged Katz, Bobrow and Kahler "purportedly" because they persisted in wearing steward buttons.

1968

The undisputed testimony is that individual discussions were had with Katz, Bobrow and Kahler. Respondent's reasons for objecting to the wearing of steward buttons were there made clear. Each employee was requested to remove his steward button. Each was warned that his failure to do so would result in discharge. Each was discharged promptly after his failure to remove the button (Katz 177; Kahler 365; Bobrow 297; Kress 887, 892). Rosenkrantz, a member of the Union and wearing a steward's button, when similarly interviewed and requested to remove his button did so and was not discharged (Kress 882).

SECTION III B

5. Exception is taken to the finding at page 3, fol. 45, that respondent never criticized Stone's work.

Petitioner's Exceptions to Intermediate Report

1969

The record contains no testimony whatever on this point.

6. Exception is taken to the finding at page 4, fol. 15, that Stone's testimony therein referred to was "undenied."

Bofinger testified that Doglione gave no reason either to Bofinger or to Stone for not taking Stone (Bofinger 433-434).

7. Exception is taken to the finding at page 4, fol. 20, that Bofinger stated to Stone, "It seems that you fellows are not making any headway whatsoever here."

1970

This alleged statement was specifically denied by Bofinger (Bofinger 435). This testimony would be pertinent only to the charge that respondent disparaged the Union, which charge the Trial Examiner dismissed at the close of the Board's case.

8. Exception is taken to the finding at page 5, fols. 10-15, that respondent "prohibited, and when informed thereof, stopped various solicitations and collections in the plant. . . ."

Respondent prohibited all solicitation. In every case, upon becoming informed of the existence of any solicitation in any form, respondent without exception took steps to stop the same (Wilson 43-45, 50-61, 69-72, 74, 75, 82, 83, 710-714, 716, 718, 725, 738, 748, 749; Doglione 791-793; Craig 686-689, 702, 703, 706, 707; Kress 862; Lasker 602, 606; Bofinger 455, 456).

1971

9. Exception is taken to the finding at page 5, fols. 15-20, that "Exceptions were made, however, in the case of Red Cross and war bond drives, collections for Republic Service Organization, the American Legion, and the sale

1972

Petitioner's Exceptions to Intermediate Report

of tickets to respondent approved and supervised athletic and social events."

War Bonds. With respect to war bond drives, the sole testimony is that of respondent's witness Wilson to the effect that application forms for purchase of war bonds were made available in the factory offices and that the plant newspaper contained frequent articles urging their purchase, but that there was no solicitation of purchases of war bonds (Wilson 69-72).

1973

American Legion. Wilson testified that although the local post of the American Legion requested permission to conduct a membership drive, such permission was refused. Notices were posted in the plant advising employees who wished to join the Legion that they could do so by communicating with the respondent's personnel director. The Legion requested permission to use application cards for obtaining membership but this request was refused (Wilson 74, 75).

1974

Red Cross. The only testimony with respect to Red Cross drives is that of Wilson to the effect that in March 1943 a Red Cross drive was conducted with the aid of two Marines from Guadalcanal speaking at the plant, the placing of envelopes on work benches and in the offices for the use of those desiring to contribute, and the placing of locked boxes in various parts of the plant in which such envelopes could be dropped. There was no individual solicitation (Wilson 70-71).

Republic Service Organization (RSO). Wilson testified that Republic Service Organization was organized by the respondent's employees on the "Victory Council" for the purpose of providing recrea-

Petitioner's Exceptions to Intermediate Report

1975

tion facilities for United States troops stationed in the vicinity of respondent's plant. One of the principal policies determined in connection with this organization was that there should not be any personal solicitation to obtain contributions. It was respondent's policy to obtain such contributions through poster and newspaper announcements (Wilson 710-714, 748, 749). Stone testified that in October 1942 a leadman in the Wing Department collected \$1.00 from him during working time for the RSO (Stone 109). Kahler testified that in October 1942 his timekeeper solicited a dollar from him for a membership in the RSO during working hours (Kahler 366, 367).

1976

Tickets to Athletic and Social Events. Wilson testified that respondent's policy with respect to the sale of such tickets was that of advertising the events on plant bulletin boards and thereby advising employees that tickets for such events could be secured at the personnel office or at various plant offices by those who desired them. The personal solicitation of employees to buy such tickets was forbidden (Wilson 33-35, 44-45, 61, 82, 83).

1977

Stone and Bobrow both testified that neither had ever been approached to purchase tickets to any such event (Stone 113; Bobrow 305).

Katz testified that in January 1943 he had been requested to buy tickets to a sporting event and also to a Volunteer Firemen's dance (Katz 184-187).

Wilson testified that attempts to solicit for these events were brought to his attention and action was immediately taken to stop the solicitation (Wilson 716-718; Resp. Ex. 4).

1978

Petitioner's Exceptions to Intermediate Report

Kahler testified that he had been solicited during working hours in the summer of 1942 to purchase tickets to a ball game and also to a dance in October 1942 (Kahler 367, 369).

Wilson testified that tickets to the Grumman-Republic baseball game in 1942 were made available for purchase at the personnel office and the cafeteria; that on learning of attempts to sell such tickets by direct solicitation, steps were taken to end this activity (Wilson 738).

1979

10. Exception is taken to the finding at page 5, fols. 20-25, that "much person to person solicitation occurred in the plant both during working hours and otherwise, often with the knowledge and participation of supervisors."

The record contains but one instance of solicitation which occurred in the plant with the knowledge or participation of any superior. This was the solicitation for the so-called Fuselage Benevolent Association. The record shows that as soon as this came to the attention of respondent's management it was stopped (Wilson 728; Bofinger 453, 478, 553). The record shows no other instance in which any supervisor permitted or participated in any form of solicitation. The record shows that in every other instance when like forms of solicitation were brought to the attention of supervisors, said supervisors took steps to bring such solicitation to an end (Doglione 791, 793; Craig 686-689, 702, 703, 706, 707).

1980

11. Exception is taken to the finding at page 5, fol. 30, that "Bofinger testified that he did not consider activity such as securing donations to the Fuselage Benevolent Association to constitute solicitation, within the meaning of the rule."

Petitioner's Exceptions to Intermediate Report

1981

The record contains no such testimony. Bofinger testified that he understood soliciting to include handing out membership cards (491) collecting or asking for contributions (492).

12. Exception is taken to the form of the finding at page 5, fols. 30-35 that Bofinger "further testified that although he was not concerned whether other forms of solicitation in the plant were violative of the rule, he was anxious to have the question answered in the case of Stone's solicitation for the Union."

1982

Bofinger testified on cross-examination (499) that he was interested in finding out whether Stone's type of solicitation came within Company rules; that when he asked his superiors about this he did not ask them about any other form of solicitation and that he was not at the time interested in whether any other form of solicitation violated Company rules. The form of the Trial Examiner's findings is to give the impression that Bofinger's state of mind in dealing with this specific instance was intended by Bofinger to indicate his general attitude on the whole question of solicitation.

1983

13. Exception is taken to the finding at page 5, fols. 35-40, that Bofinger, after being instructed that solicitation of Union memberships violated the Company rule against solicitation, "permitted" Stone to continue soliciting for about a week.

The undisputed testimony is that as soon as Bofinger had, himself, verified that Stone was soliciting, he instructed Stone to discontinue (Bofinger 437, 449; Stone 103).

14. Exception is taken to the finding at page 5, fols. 35-40, that on the day that Stone first wore his steward

1984

Petitioner's Exceptions to Intermediate Report

button, Bofinger first warned him with respect to his solicitation activities and promptly thereafter took steps to secure his discharge because of the very activities Stone had indulged in during Bofinger's silence.

1985

Stone first wore his steward button on January 14 (Stone 92, 123, 142). There is no testimony that Bofinger first personally observed Stone soliciting on January 15; warned him against continuing to do so on that day; Stone informed Bofinger that he intended to continue; and Bofinger for that reason took steps to secure his discharge, which did not occur until January 20 (Bofinger 438, 445, 510; Stone 97, 126).

15. With reference to footnote 10 on page 5, fol. 50, exception is taken to the failure to report that the undisputed testimony is that the activities of the Fuselage Benevolent Association first came to the attention of the management during the course of this hearing and that the management thereupon took immediate steps for its discontinuance (Wilson 728; Bofinger 453, 478, 553).

1986

16. Exception is taken to the finding at page 6, fol. 10 that respondent had an "avid interest in Stone's doings" and that it "entrapped" Stone.

The record shows that the respondent was no less vigilant in stopping all other solicitations brought to its attention (Wilson 43-45, 50-61, 69-72, 74, 75, 82, 83, 710-714, 716, 718, 725, 738, 748, 749; Doglione 791, 793; Craig 686-689). The respondent did not interfere with Stone's activities until those in charge of enforcement of a Company rule, had first had knowledge of Stone's violation thereof and thereupon gave Stone due warning and full opportunity to comply with its rule (Bofinger 436-439, 445, 446; Lasker 596, 640; Kress 874; Stone 98, 125, 126).

Petitioner's Exceptions to Intermediate Report

1987

17. Exception is taken to the finding at page 6, fol. 15, that had Stone not been engaged in working for the Union, respondent "had it seen fit to discipline him in any degree" would not have discharged him.

There is no evidence to support this finding. The record shows that at least one other employee who persisted in solicitation of a non-union nature was warned that continuance would result in discharge and that said employee when so warned discontinued his activities (Doglione 793).

1988

18. Exception is taken to the finding at page 6, fols. 15-20, that "The evidence discloses" that employee Clements voluntarily resigned because he could not meet all the money demands made upon him at the plant by employees, including supervisors.

The evidence discloses that although Clements had been frequently in contact with his superiors in an unsuccessful effort to get a raise, he had at no time previous to his resignation made any complaint to any superior with respect to solicitation (Clements 410). Clements' supervisor testified that Clements demanded his own release for the stated reason that he had not received a promised raise and that thereafter he, for the first time, made complaint about solicitation (Craig 684-685).

1989

19. Exception is taken to the failure to report at page 6, fols. 20-25, that upon first being informed by Clements of solicitations, Craig investigated the details of each of Clements' two specific complaints and specifically instructed his foreman that each should stop immediately (Craig 686, 688, 702, 703, 707).

20. Exception is taken to the findings and conclusion at page 6, fol. 30, that "the respondent, by discriminating

1990

Petitioner's Exceptions to Intermediate Report

against Stone in the application of its rule against solicitation upon its premises, has acted in contravention of Section 8(3) of the Act", upon the ground that said findings and conclusion are not supported by the evidence and are contrary to law.

21. Exception is taken to the findings at page 7, fol. 5, "that many of [respondent's] employees live long distances from the respondent's plant and that their homes are scattered over a wide area."

1991

There is no testimony whatever as to where or how far from respondent's plant the body of its employees live other than Bobrow's vague general comment (292) which was obviously not confined to respondent's plant alone.

22. Exception is taken to each and every of the findings and conclusions contained in the second, fourth and fifth paragraphs at page 7, fols. 15-20, 35 and 40-45, respectively, on the ground that such findings are not supported by the evidence and are contrary to law.

1992

23. With reference to the finding at page 8, fol. 12, that Katz protested to his supervisor Bondy that he was being "hounded" by his superior, exception is taken to the failure to report Katz's testimony that he told Bondy that he "thought" he was being hounded by his foreman because he belonged to the Union, although he admitted that he had not told his foreman that he was a Union member (Katz 149, 211, 212); and to the failure to report that Katz testified that Bondy told Katz that he had a right to be in the Union and to organize, and that no one would molest him on that account (Katz 149, 214).

24. Excepts to the finding at page 8, fol. 15, that Bondy stated to Katz, "What do you expect to get out of a union? What can a union do during war time?"

Petitioner's Exceptions to Intermediate Report

1993

This testimony would be pertinent only to the charges that respondent disparaged the Union and urged and warned its employees not to join or assist the Union, both of which charges have been dismissed by the Trial Examiner.

25. With respect to the finding contained in the third paragraph on page 8, fols. 25-35, exception is taken to the failure to report that said findings state only Katz's version of the occurrences reported in said paragraph.

26. Exception is taken to the finding at page 8, fol. 40, that Doglione requested Katz's release on January 14.

1994

On the afternoon of the day on which Doglione requested Katz's release, Katz, was summoned to Lasker's office for a talk (Katz 170; Lasker 600, 604; Doglione 816) as a result of which he was then and there reinstated. The day after Lasker had summoned Katz and reinstated Katz, the latter sought to interview Lasker without, however, first clearing with his superior, and as a result did not get the interview (Lasker 604; Doglione 819). The date on which Katz sought this interview is fixed as January 14 on Lasker's secretary's notebook and by Lasker's recollection that the attempt to see him occurred the day after he had reinstated Katz (Lasker 604). The morning of the day following that on which Katz so attempted to see Lasker, Doglione reprimanded Katz for going to see Lasker without permission (Katz 173; Doglione 820). It was this same morning that Doglione rejected Bofinger's loan of Stone (Doglione 825). Stone and Bofinger both fix this event as having occurred on January 15 (Stone 93; Bofinger 428). Katz, himself, fixes January 14, the previous day, as the day when he first

1995

1996

Petitioner's Exceptions to Intermediate Report

wore his steward button (Katz 147). Therefore, from this chronology it is clear that Doglione requested Katz's release *two days* before January 15 and one day before he first wore a steward button.

1997

27. With respect to the finding at page 8, fols. 50-55, that Lasker stated to Katz that it was against the respondent's rules and employees were forbidden to talk of the Union in the plant but could wear any kind of Union button they wished, exception is taken to the failure of the Trial Examiner to report that Lasker specifically denied making either of such statements to Katz.

See Lasker's testimony (602-604).

28. Excepts to the finding at page 9, fol. 5, that Lasker fixed the date of meeting with Katz at which he reinstated Katz as January 13, "because of a notation made on the following day by his secretary in her notebook, and that he recalled that that day was January 14."

1998

Lasker testified that on the day following that on which Lasker had summoned Katz for an interview and reinstated him, Katz had come to Lasker's office and sought an appointment himself, and that he fixed this second date as January 14 because it was so dated in his secretary's notebook (Lasker 604, 619, 637).

29. Excepts to the finding at page 9, fol. 15, that Lasker "was not definite" as a witness.

The content of Lasker's testimony (539-547) does not support this finding in any respect.

30. Excepts to the finding at page 9, fol. 15, that "MacDonald merely parroted Lasker's testimony."

Petitioner's Exceptions to Intermediate Report

1999

MacDonald, as one of those present at the January 13 meeting between Katz and Lasker, was called to corroborate Lasker's testimony of what took place at this meeting. He corroborated Lasker's testimony. He was not cross-examined as to what occurred at the meeting (MacDonald 649-655).

31. Excepts to the finding at page 9, fols. 20-25, that the interview at which Katz was reinstated, took place on January 14 and that Katz wore his steward button at that interview, for the reasons stated above in Exceptions 28 and 26.

2000

32. With respect to the finding in next to the last paragraph on page 9, fol. 50, excepts to the failure to report said finding as being based upon Katz's version of the occurrences therein set forth, and to the failure to report that Doglione specifically denied that he had told Katz that he was a good worker.

Doglione testified that he told Katz at this time that he could be a good worker if he made up his mind to it (Doglione 830).

33. Exception is taken to the finding in footnote 19 at page 9, fol. 60, that the remarks attributed to Lasker and denied by him with respect to the wearing of Union buttons is to be interpreted as having been intended by Lasker to include a steward's button for the reason that such a finding is merely an inference drawn by the Trial Examiner as to what Lasker meant by the remark attributed to him without any basis of evidence in the record.

2001

34. Excepts to the failure to find that from and after December 1942 numerous employees wore CIO membership buttons in the plant without interference (Bofinger

2002

Petitioner's Exceptions to Intermediate Report

450, 582-590; Doglione 794-796; Romeo 667, 668; Lebair 761, 770; Katz 192).

35. With respect to the finding at page 10, fol. 50, that Bobrow and Kahler were told that it was impossible to reinstate Katz and Stone, exception is taken to the failure of the Trial Examiner to report that Kress testified Bobrow told him that if Katz were to be reinstated Katz would continue to wear the shop steward's button.

See testimony of Kress (892).

2003

36. Excepts to the finding on page 11, fol. 10, that during the three weeks ending on January 19, 1943, the Union had renewed its drive, for the reasons stated in Exception 1 above.

37. Excepts to the finding on page 11, fol. 15, that Bobrow was "quarantined in the plant by Foreman Nepsee."

There is no testimony to justify any such finding or characterization of the purpose or effect of the order alleged by Bobrow to have been issued to him by his foreman (Bobrow 278, 279).

2004

38. Excepts to the findings at page 11, fols. 20-25, on the ground that such findings are unsupported by the evidence and contrary to law.

39. Excepts to the failure to dismiss the charge that respondent on and after May 1, 1942, expressed disapproval of the Union.

The record contains no testimony of any expression of disapproval of the Union by anyone connected with respondent. The failure to dismiss this charge is inconsistent with the Trial Examiner's action in dismissing the charges of vilification and dis-

Petitioner's Exceptions to Intermediate Report

2005

paragement of the Union, and of having urged and warned its employees not to join or assist in the Union.

40. Excepts to the failure to dismiss the charge that since March 1, 1942, respondent was engaged in surveillance of Union members.

There is no evidence of any such surveillance. The only evidence of any sort of surveillance has to do with Stone. It is clear both from the testimony of Stone (100) and Bofinger (438-439, 448, 459) that the former was watched only on occasions when he engaged in violating respondent's solicitation rule (principally after Stone had specifically informed Bofinger that he did not intend to obey the rule), and that such observation of Stone was solely in the interest of enforcement of respondent's said rule.

2006

41. Excepts to each and every finding and conclusion contained in the second full paragraph on page 12, fols. 20-30, on the ground that said findings and conclusions are not supported by the evidence and are contrary to law.

2007

42. Exception is taken to the finding at page 12, fols. 55-60, that respondent discharged and refused to reinstate Stone, Katz, Bobrow and Kahler for the reason that they had joined and assisted a labor organization and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, on the ground that such finding is not supported by the evidence and is contrary to law.

43. Excepts to the conclusions of law numbered 2 and 3 on page 13, fols. 20-25, on the ground that said conclu-

2008

Petitioner's Exceptions to Intermediate Report

sions are not supported by the evidence and are contrary to law.

44. Respondent excepts to each and all of the "recommendations" of the Trial Examiner as contained in said report as being unsupported in and contrary to the facts disclosed in the record, and contrary to and without authority in law.

45. Respondent further expressly excepts to:

2009

(A) The denial by the Examiner of respondent's motion to dismiss the proceedings, made at the conclusion of the Board's case (422).

(B) The denial by the Examiner of respondent's motion to dismiss the complaint, made at the conclusion of the entire case (Int. Rep. p. 2, fols. 19-22).

2010

WHEREFORE, respondent moves that the said Intermediate Report of the Trial Examiner together with its recitals, findings of fact, conclusions, limitations and recommendations, be reversed, vacated and set aside; that this Board make and enter findings of fact and conclusions of law as are required by the evidence, free from error and irregularity which has intervened; and that this Board, among other things, declare that the discharges of said Stone, Katz, Bobrow and Kahler was for just cause and in no respect actuated or prompted by the fact that said Stone, Katz, Bobrow and Kahler were members of or active in the affairs of the Union; that this Board find that the statements and allegations of the complaint (a) in respect of said Stone, Katz, Bobrow and Kahler, and (b) in respect of the claims that respondent interfered with its employees in the exercise of rights under Section 7 of the National Labor Relations Act in the respects and to the extent therein alleged, and (c) in respect of the claims that re-

Petitioner's Exceptions to Intermediate Report

2011

spondent had interrogated its employees concerning their Union affiliations, had urged, persuaded, threatened and warned its employees to refrain from assisting, becoming members of or remaining members of the Union, and had kept Union members under surveillance, be declared to be without merit and support in fact, and that said complaint be dismissed.

The right and opportunity to present oral argument and formal brief in support of (a) these exceptions, and (b) respondent's motion and request herein for a dismissal of these proceedings, is hereby reserved and requested.

2012

REPUBLIC AVIATION CORPORATION

By JOHN J. RYAN

DONOVAN, LEISURE, NEWTON & LUMBARD
Its Attorneys

2013

2014

**Order Transferring Case to National Labor Relations
Board, Dated May 24, 1943.**

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of

REPUBLIC AVIATION CORPORATION

2015

and

**INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO.**

Case No. C-2621 (2-C-4826)

2016

A hearing in the above-entitled case having been held before a duly designated Trial-Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington,

IT IS HEREBY ORDERED, pursuant to Article II, Section 32, of National Labor Relations Board Rules and Regulations—series 2, as amended, that Case No. 2-C-4826 be, and it hereby is, transferred to and continued before the Board as Case No. C-2621.

Dated, Washington, D. C., May 24, 1943.

By direction of the Board:

John E. Lawyer
John E. Lawyer
Chief, Order Section

(SEAL)

**Decision and Order of the National Labor Relations
Board, Dated August 11, 1943**

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

**In the Matter of
REPUBLIC AVIATION CORPORATION**

and

**INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO.**

Case No. C-2621

On May 21, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and that it take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions, and the Union filed a brief in support of the Intermediate Report. The Board has considered the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Pursuant to notice and at the request of the respondent, a hearing was held before the Board at Washington, D. C., on July 15, 1943, for the purpose of oral argument. The respondent and the Union were represented by counsel and

2020

*Decision and Order of the National Labor Relations
Board, Dated August 11, 1943*

participated in the hearings. Thereafter the respondent and the Union submitted further briefs to the Board.

The Board has considered the Intermediate Report, the briefs and exceptions filed by the parties, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as noted below.

2021

1. The Trial Examiner has found that the respondent discriminatorily discharged Sam Stone. The respondent admits that Stone was discharged for engaging in union solicitation on company property during lunch periods, which are clearly not working time, but contends that by so doing Stone knowingly violated the respondent's established rule prohibiting all types of personal solicitation on company property during or outside of working hours. The legality of similar restrictive rules has been considered by the Board in several recent cases, and it is now established that, in the absence of special circumstances, a rule prohibiting union activity on company property outside of working time constitutes an unreasonable impediment to self-organization, and that discharges for violation thereof are discriminatory.¹ In the present case, the record discloses no special circumstances, and the respondent advances no cogent reason, warranting extension of the prohibition to non-working time, when production and efficiency could not normally be affected by union activity. We therefore find, as did the Trial Examiner, that the respondent, by promulgating and enforcing a no-solicitation

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¹ *Matter of The Denver Tent and Awning Co.*, 47 N.L.R.B., No. 76; *Matter of United States Cartridge Company*, 47 N.L.R.B., No. 115; *Matter of Carter Carburetor Corporation*, 48 N.L.R.B., No. 48; and *Matter of Peyton Packing Company*, 50 N.L.R.B., No. 51. See also *N.L.R.B. v. William Davies Co.*, 135 F. (2d) 179 (C.C.A. 7).

*Decision and Order of the National Labor Relations
Board, Dated August 11, 1943*

2023

rule applicable to non-working time, interfered with, restrained, and coerced its employees, within the meaning of Section 8 (1) of the Act, and, by discharging Stone for violating this rule by engaging in union solicitation on his own time, discriminated in regard to his hire and tenure of employment, within the meaning of Section 8 (3) of the Act. The Trial Examiner has also found that the rule in question was discriminatorily applied to Stone. We are not satisfied that this finding is supported by the record, and it is hereby reversed; but this does not affect our finding that Stone's discharge was improper.

2024

2. The Trial Examiner has found that the respondent discriminatorily discharged Robert Katz, Robert Bobrow, and Raymond Kahler. The respondent admits that it discharged these employees for refusing to comply with a request not to wear their union steward buttons while in the plant, but contends in effect that it could properly prohibit the wearing of steward buttons in the plant because the wearer of a steward button thereby represents himself to the employees as "an official of an established union, authorized by his union and acknowledged by the management to represent the employees in dealing with the management," and because the Union was not at the time the duly designated representative of the employees. The respondent also contends that it was necessary to stop the wearing of these buttons in the plant in order to maintain its policy of "strict neutrality" and to insure the orderly operation of its own grievance system. We do not believe that the wearing of a steward button is a representation that the employer either approves or recognizes the union in question as the representative of the employees, especially when, as here, there is no competing labor organization in the plant. Furthermore, there is no evidence in the record herein that the respondent's employees so understood the

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2026 *Decision and Order of the National Labor Relations Board, Dated August 11, 1943*

steward buttons or that the appearance of union stewards in the plant affected the normal operation of the respondent's grievance procedure. On the other hand, the right of employees to wear union insignia at work has long been recognized as a reasonable and legitimate form of union activity, and the respondent's curtailment of that right is clearly violative of the Act. A similar question was raised in *Matter of Armour & Company*, 8 N.L.R.B. 1100, in which the Board held that a steward was a union officer, who "was entitled to wear a button indicating his rank and function in the labor organization," and that therefore his discharge for refusing to remove his steward button in the plant was discriminatory. The respondent herein does not challenge the decision in the *Armour* case, but seeks to distinguish that case from the present case. We are of the opinion that the cases involve essentially the same question. Accordingly, we find, as did the Trial Examiner, that the respondent discriminatorily discharged Katz, Bobrow, and Kahler because of their union activities. The Trial Examiner has further found that the respondent's interdiction against the wearing of union steward buttons was "a part of its offense against" the Union. The record in our opinion does not support this finding as to the respondent's opposition to the Union, and it is hereby reversed. It appears from the record that before the ban was made effective, the respondent's officials conferred with the stewards involved and sought to justify the prohibition, at the same time giving assurance that employees were free to wear other types of union buttons and to discuss union matters in the plant, so long as they did not violate the respondent's no-solicitation rule. Nevertheless, the respondent, by adopting and enforcing the prohibition against the wearing of steward buttons, interfered with, restrained, and coerced its employees, within the meaning of Section 8 (1) of the Act.

*Decision and Order of the National Labor Relations
Board, Dated August 11, 1943*

2029

3. The Trial Examiner has found that the respondent, by its surveillance of Stone, and by the activity of Sectional Supervisors Bofinger and Doglione, Supervisor Bondy, Foremen Nepsee and Zilensky, and Leadman Lehair, engaged in unfair labor practices, within the meaning of Section 8 (1) of the Act. We agree with this finding, except insofar as it is based on the activity of Bondy, Zilensky, and Lehair. We do not believe that the activity of these three supervisory employees constituted interference, restraint, and coercion, within the meaning of Section 8 (1) of the Act; and the Trial Examiner's finding to the contrary is hereby reversed. On the other hand, we are satisfied that Doglione's refusal to accept Stone as an employee because of his union activity was clearly coercive conduct, and that Bofinger's subsequent remark to Stone, that the union members in the plant were making no headway, was ~~timed~~ so as to indicate his opposition to the Union. Hostility to the Union was also clearly evidenced by Nepsee's restricting Bobrow's movements in the plant on the day he first wore a union steward button. Finally, the respondent's deliberate observation of Stone's union activities on his own time in the plant—activities which we have held the respondent could not properly inhibit—had a restraining effect on the employees in exercising their right to self-organization. We therefore find that the respondent, by the above-described statement and conduct, engaged in unfair labor practices, within the meaning of Section 8 (1) of the Act.

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ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Republic Aviation Corporation, Babylon

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*Decision and Order of the National Labor Relations
Board, Dated August 11, 1943*

Township, Suffolk County, New York, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

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(a) Discouraging membership in International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Sam Stone, Robert Katz, Robert Bobrow, and Raymond Kahler immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges:

(b) Make whole Sam Stone, Robert Katz, Robert Bobrow, and Raymond Kahler for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he would normally have earned as wages from the date of his discriminatory discharge to the date of the respondent's offer of reinstatement, less his net earnings during that period;

*Decision and Order of the National Labor Relations
Board, Dated August 11, 1943*

2035

(c) Rescind immediately the rule against solicitation insofar as it prohibits union activity and solicitation on company property during the employee's own time;

(d) Immediately post in conspicuous places throughout its plant in Babylon Township, Suffolk County, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and (3) that the employees of the respondent are free to become and remain members of International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

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(e) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

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Signed at Washington, D. C., this 11th day of August, 1943.

Gerard D. Reilly
Member

JOHN M. HOUSTON
Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

2038

**Petitioner's Petition to Review and Set Aside Order
of the National Labor Relations Board**

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

REPUBLIC AVIATION CORPORATION,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD,

Respondent.

2039

*To the Honorable, the Judges of the United States Circuit
Court of Appeals for the Second Circuit:*

Republic Aviation Corporation, your petitioner, respectfully shows:

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I. Your petitioner is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware and qualified to do business in New York State under the laws of the State of New York.

II. Your petitioner is engaged and at all times herein mentioned was engaged in the business of the manufacture and sale of military aircraft and spare parts at its plant in the Town of Babylon, County of Suffolk, State of New York, within the Second Circuit of the United States Circuit Court of Appeals.

• III. As more fully appears herein from the order of the National Labor Relations Board (hereinafter called the "Board"), dated the 11th day of August, 1943, and annexed hereto and made a part hereof as Exhibit A, the al-

*Petitioner's Petition to Review and Set Aside Order
of the National Labor Relations Board*

2041

leged unfair labor practices with which your petitioner is charged were committed in the Town of Babylon, County of Suffolk, State of New York, within the Second Circuit of the United States Circuit Court of Appeals.

IV. By reason of the matters alleged in Paragraphs I, II and III herein, and by virtue of Section 10(f) of the National Labor Relations Act (hereinafter called the "Act"), this Court has jurisdiction of the parties and the subject matter of this petition.

2042

V. On March 24, 1943, the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO (hereinafter called the "Union"), filed with the Regional Director of the Board for the Second Region in New York, N. Y., a fourth amended charge which alleged that your petitioner at Republic, Long Island, County of Nassau, State of New York, was engaging in unfair labor practices within the meaning of the Act.

VI. Thereafter the Board by its Regional Director for the Second Region issued and caused to be served upon your petitioner its complaint dated March 24, 1943, which alleged in substance that your petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, Subdivisions (1) and (3), and Section 2, Subdivisions (6) and (7) of the Act.

2043

VII. On or about April 13, 1943 your petitioner filed its answer wherein it admitted that it was engaged in interstate commerce, denied the allegations of the complaint with respect to discriminatory discharges of the employees involved; alleged affirmatively that their discharges were the result of their refusal after due warning to obey petitioner's rules and instructions and denied all of the allega-

2044 *Petitioner's Petition to Review and Set Aside Order
of the National Labor Relations Board*

tions of the complaint with respect to the alleged violation of Section 8 (1) of the Act, but admitted maintenance of a rule prohibiting solicitation of any type at petitioner's said plant and prohibition of the employees involved from wearing certain alleged Union shop steward buttons.

2045 VIII. On April 15, 16, 19, 20, 21 and 22, 1943, a hearing was held in New York, N. Y., before Josef L. Hektoen, the Trial Examiner, designated by the Board. The petitioner, the Board and the Union were represented by counsel. At the close of the Board's case, counsel for the petitioner moved to dismiss the complaint. The Trial Examiner granted said motion in so far as the complaint alleged that the petitioner had vilified and disparaged the Union and in all other respects denied said motion. At the close of the hearing the Trial Examiner heard oral argument on petitioner's motion to dismiss the complaint, and reserved decision.

2046 IX. On May 24, 1943, the Trial Examiner filed his Intermediate Report, dated May 21, 1943, with the Board. In said report the Trial Examiner denied your petitioner's motion to dismiss the complaint; found that your petitioner had engaged in and was engaging in unfair labor practices within the meaning of Section 8, Subdivisions (1) and (3), and Section 2, Subdivisions (6) and (7) of the Act, and recommended that your petitioner cease and desist from engaging in such alleged unfair labor practices. The Trial Examiner in said Intermediate Report recommended that your petitioner take the following affirmative action in order to effect the policies of the Act:

- (a) Offer full reinstatement to the persons alleged to have been discriminatorily discharged with back pay from the date of their discharge;

*Petitioner's Petition to Review and Set Aside Order
of the National Labor Relations Board*

2047

(b) Rescind its rule against solicitation in so far as it prohibits Union activity in the plant, except during working hours;

(c) Post notices to the effect that your petitioner would comply with the recommendations outlined in said Intermediate Report; and

(d) Notify the Regional Director for the Second Region what steps it had taken to comply with the recommendations contained in said Intermediate Report.

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The Trial Examiner concluded that your petitioner was not engaged in unfair labor practices within the meaning of Section 8, Subdivision (1) of the Act by vilifying or disparaging the Union or by urging and warning its employees not to join or assist the Union as alleged in the complaint and recommended that the complaint to this extent be dismissed.

X. The Board, by order dated May 24, 1943, directed that the case be transferred to and continued before it as Case No. C-2621. On June 15, 1943 petitioner filed its exceptions to the Trial Examiner's Intermediate Report and on July 15, 1943, after the submission of briefs, oral argument was had before the Board. After oral argument, your petitioner filed its reply brief with the Board.

2049

XI. On August 12, 1943 the Board served on your petitioner its Decision and Order dated August 11, 1943, which is here sought to be reviewed and set aside. A copy of said Decision and Order is annexed hereto and made a part hereof as Exhibit A.

XII. Your petitioner, deeming itself aggrieved and believing said Decision and Order to be prejudicial to it, un-

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*Petitioner's Petition to Review and Set Aside Order
of the National Labor Relations Board*

warranted and not sustained in law or on the facts established, hereby petitions for review of said Decision and Order of the Board by the United States Circuit Court of Appeals for the Second Circuit and assigns as its reasons therefor that the Board in and by its said Decision and Order erred in the following respects:

2051

1. In its affirmance of the Trial Examiner's denial of your petitioner's motion to dismiss the complaint at the conclusion of the Board's case.

2. In its affirmance of the Trial Examiner's denial of your petitioner's motion to dismiss the complaint at the end of the entire case.

3. In its findings and conclusions that:

(a) By promulgating and enforcing its rule prohibiting solicitation of any kind at its said plant, your petitioner interfered with, restrained and coerced its employees within the meaning of Section 8 (1) of the Act and by discharging Stone for his violation of said rule, discriminated in regard to said Stone's hire and tenure of employment within the meaning of Section 8 (3) of the Act;

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(b) By adopting and enforcing its prohibition of the wearing of certain alleged Union shop steward buttons, your petitioner interfered with, restrained and coerced its employees within the meaning of Section 8 (1) of the Act and by discharging Katz, Bobrow and Kahler for continuing to wear said buttons, discriminated against them in their hire and tenure of employment within the meaning of Section 8 (3) of the Act;

(c) By its surveillance of Stone and by activities of Sectional Supervisor Bofinger and Dog-

*Petitioner's Petition to Review and Set Aside Order
of the National Labor Relations Board*

2053

lione and Foreman Nepsee referred to in said Decision and Order, your petitioner engaged in unfair labor practices within the meaning of Section 8 (1) of the Act;

(d) By discriminating in regard to the hire and tenure of the employment of Sam Stone, Robert Katz, Robert Bobrow and Raymond Kahler and thereby discouraging membership in the Union, your petitioner has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act;

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(e) By interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, your petitioner has engaged in and is engaging in unfair practices within the meaning of Section 8 (1) of the Act;

(f) Your petitioner engaged in, and is engaging in unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

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XIII. No previous application has been made for the relief herein sought.

WHEREFORE, your petitioner prays

(1) That a copy of this petition be forthwith filed with the clerk of this Court to the end that the Board may be required in conformity with the statute to certify to this Court a transcript of the entire record in this proceeding wherein the aforesaid Order and Decision of this Board dated August 11, 1942, was entered.

2056

*Petitioner's Petition to Review and Set Aside Order
of the National Labor Relations Board*

(2) That this Court review the entire record in this proceeding including the aforesaid Order and Decision of the Board and its findings of fact and conclusions made therein and set aside and vacate said findings and conclusions in so far as your petitioner has hereinabove excepted thereto, and set aside and vacate said Order and Decision, and direct said Board to dismiss the Complaint heretofore issued against your petitioner; and

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(3) For such other, further or different relief as to this Court may seem just and proper.

Dated: Farmingdale, N. Y.
August 21, 1943

Respectfully submitted,

REPUBLIC AVIATION CORPORATION,
Petitioner.

By C. H. MILLER,
Vice-President.

2058 John J. Ryan, Esq.

Donovan, Leisure, Newton & Lombard
Attorneys for Petitioner

*Petitioner's Petition to Review and Set Aside Order
of the National Labor Relations Board*

2059

STATE OF NEW YORK }
COUNTY OF SUFFOLK } ss.:

C. H. MILLER, being duly sworn, deposes and says that he is an officer, to wit, the Vice-President of Republic Aviation Corporation, the petitioner in the foregoing petition; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

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C. H. MILLER,
Vice-President.

Sworn to before me this
21st day of August, 1943.

SHEILA M. BERGEN

Notary Public, Nassau County, N. Y.

Certificate filed in Suffolk County

Commission expires March 30, 1945

(SEAL)

2061

2062

Exhibit A**UNITED STATES OF AMERICA****BEFORE THE****NATIONAL LABOR RELATIONS BOARD****In the Matter of****REPUBLIC AVIATION CORPORATION****and****INTERNATIONAL UNION UNITED AUTO-
MOBILE, AIRCRAFT & AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA,
UAW-CIO.****Case No. C-2621****DECISION****and****ORDER**

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On May 21, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and that it take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions, and the Union filed a brief in support of the Intermediate Report. The Board has considered the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Exhibit A

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Pursuant to notice and at the request of the respondent, a hearing was held before the Board at Washington, D. C., on July 15, 1943, for the purpose of oral argument. The respondent and the Union were represented by counsel and participated in the hearing. Thereafter the respondent and the Union submitted further briefs to the Board.

The Board has considered the Intermediate Report, the briefs and exceptions filed by the parties, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as noted below.

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1. The Trial Examiner has found that the respondent discriminatorily discharged Sam Stone. The respondent admits that Stone was discharged for engaging in union solicitation on company property during lunch periods, which are clearly not working time, but contends that by so doing Stone knowingly violated the respondent's established rule prohibiting all types of personal solicitation on company property during or outside of working hours. The legality of similar restrictive rules has been considered by the Board in several recent cases, and it is now established that, in the absence of special circumstances, a rule prohibiting union activity on company property outside of working time constitutes an unreasonable impediment to self-organization, and that discharges for violation thereof are discriminatory.¹ In the present case, the record discloses no special circumstances, and the respondent advances no cogent reason, warranting extension of the prohibition to non-working time, when production and efficiency could not normally be affected by union activity. We there-

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¹ *Matter of The Denver Tent and Awning Co.*, 47 N.L.R.B., No. 76; *Matter of United States Cartridge Company*, 47 N.L.R.B., No. 115; *Matter of Carter Carburetor Corporation*, 48 N.L.R.B., No. 48; and *Matter of Peyton Packing Company*, 50 N.L.R.B., No. 51. See also *N.L.R.B. v. William Davies Co.*, 135 F. (2d) 179 (C.C.A. 7).

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Exhibit A

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fore find, as did the Trial Examiner, that the respondent, by promulgating and enforcing a no-solicitation rule applicable to non-working time, interfered with, restrained, and coerced its employees, within the meaning of Section 8 (1) of the Act, and, by discharging Stone for violating this rule by engaging in union solicitation on his own time, discriminated in regard to his hire and tenure of employment, within the meaning of Section 8 (3) of the Act. The Trial Examiner has also found that the rule in question was discriminatorily applied to Stone. We are not satisfied that this finding is supported by the record, and it is hereby reversed; but this does not affect our finding that Stone's discharge was improper.

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2. The Trial Examiner has found that the respondent discriminatorily discharged Robert Katz, Robert Bobrow, and Raymond Kahler. The respondent admits that it discharged these employees for refusing to comply with a request not to wear their union steward buttons while in the plant, but contends in effect that it could properly prohibit the wearing of steward buttons in the plant because the wearer of a steward button thereby represents himself to the employees as "an official of an established union, authorized by his union and acknowledged by the management to represent the employees in dealing with the management," and because the Union was not at the time the duly designated representative of the employees. The respondent also contends that it was necessary to stop the wearing of these buttons in the plant in order to maintain its policy of "strict neutrality" and to insure the orderly operation of its own grievance system. We do not believe that the wearing of a steward button is a representation that the employer either approves or recognizes the union in question as the representative of the employees, especially when, as here, there is no competing labor organization in the plant. Furthermore, there is no evidence in the record herein that the respondent's employees so under-

Exhibit A

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stood the steward buttons or that the appearance of union stewards in the plant affected the normal operation of the respondent's grievance procedure. On the other hand, the right of employees to wear union insignia at work has long been recognized as a reasonable and legitimate form of union activity, and the respondent's curtailment of that right is clearly violative of the Act. A similar question was raised in *Matter of Armour & Company*, 8 N.L.R.B. 1100, in which the Board held that a steward was a union officer, who "was entitled to wear a button indicating his rank and function in the labor organization" and that therefore his discharge for refusing to remove his steward button in the plant was discriminatory. The respondent herein does not challenge the decision in the *Armour* case, but seeks to distinguish that case from the present case. We are of the opinion that the cases involve essentially the same question. Accordingly, we find, as did the Trial Examiner, that the respondent discriminatorily discharged Katz, Bobrow, and Kahler because of their union activities. The Trial Examiner has further found that the respondent's interdiction against the wearing of union steward buttons was "a part of its offense against" the Union. The record in our opinion does not support this finding as to the respondent's opposition to the Union, and it is hereby reversed. It appears from the record that before the ban was made effective, the respondent's officials conferred with the stewards involved and sought to justify the prohibition, at the same time giving assurance that employees were free to wear other types of union buttons and to discuss union matters in the plant, so long as they did not violate the respondent's no-solicitation rule. Nevertheless, the respondent, by adopting and enforcing the prohibition against the wearing of steward buttons, interfered with, restrained, and coerced its employees, within the meaning of Section 8 (1) of the Act.

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Exhibit A

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The Trial Examiner has found that the respondent, by its surveillance of Stone, and by the activity of Sectional Supervisors Bofinger and Doglione, Supervisor Bondy, Foremen Nepsee and Zilensky, and Leadman Lebair, engaged in unfair labor practices, within the meaning of Section 8 (1) of the Act. We agree with this finding, except insofar as it is based on the activity of Bondy, Zilensky and Lebair. We do not believe that the activity of these three supervisory employees constituted interference, restraint, and coercion, within the meaning of Section 8 (1) of the Act, and the Trial Examiner's finding to the contrary is hereby reversed. On the other hand, we are satisfied that Doglione's refusal to accept Stone as an employee because of his union activity was clearly coercive conduct, and that Bofinger's subsequent remark to Stone, that the union members in the plant were making no headway, was timed so as to indicate his opposition to the Union. Hostility to the Union was also clearly evidenced by Nepsee's restricting Bobrow's movements in the plant on the day he first wore a union steward button. Finally, the respondent's deliberate observation of Stone's union activities on his own time in the plant—activities which we have held the respondent could not properly inhibit—had a restraining effect on the employees in exercising their right to self-organization. We therefore find that the respondent, by the above-described statement and conduct, engaged in unfair labor practices, within the meaning of Section 8 (1) of the Act.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Republic Aviation Corporation, Babylon Township, Suffolk County, New York, and its officers, agents, successors, and assigns, shall:

Exhibit A

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1. Cease and desist from:

(a) Discouraging membership in International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Sam Stone, Robert Katz, Robert Bobrow, and Raymond Kahler immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

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(b) Make whole Sam Stone, Robert Katz, Robert Bobrow, and Raymond Kahler for any loss of pay they have suffered by reason of the respondent's discrimination against them; by payment to each of them of a sum of money equal to the amount which we (sic) would normally have earned as wages from the date of his discriminatory discharge to the date of the respondent's offer of reinstatement, less his net earnings during that period;

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Exhibit A

(c) Rescind immediately the rule against solicitation insofar as it prohibits union activity and solicitation on company property during the employees' own time;

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(d) Immediately post in conspicuous places throughout its plant in Babylon Township, Suffolk County, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1.(a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2.(a), (b) and (c) of this Order; and (3) that the employees of the respondent are free to become and remain members of International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

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(e) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 11th day of August, 1943.

GERARD D. REILLY
Member

JOHN M. HOUSTON
Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

**Respondent's Answer to Petition for Review and
Request for Enforcement**

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPUBLIC AVIATION CORPORATION,

Petitioner,

v.

2084

NATIONAL LABOR RELATIONS BOARD,

Respondent.

*To the Honorable, the Judges of the United States Circuit
Court of Appeals for the Second Circuit:*

Comes now the National Labor Relations Board, hereinafter called the Board, and, pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*), hereinafter called the Act, files this answer to the petition for review filed herein and its request for enforcement of the Board's order.

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1. The Board admits the allegations contained in paragraphs 1, 2, 3, 4, and 13 of the petition to review.

2. With respect to paragraphs 5, 6, 7, 8, 9, 10, and 11 of the petition to review, the Board prays reference to the certified record of the proceedings before the Board, filed herein, for a full and exact statement of the pleadings, evidence, rulings, and intermediate report of the Trial Examiner, findings of fact, conclusions of law, and order of the Board.

2086

*Respondent's Answer to Petition for Review and
Request for Enforcement*

3. The Board denies each and every allegation of error contained in paragraph 12 of the petition to review.

WHEREFORE, having answered each and every allegation contained in the petition for review, the Board prays the Honorable Court that said petition be denied.

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Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests the Honorable Court for enforcement of its order issued against petitioner on August 11, 1943, in proceedings designated on the records of the Board as Case No. C-2621, entitled "In the Matter of Republic Aviation Corporation and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO."

In support of this request for enforcement of its order, the Board respectfully shows as follows:

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(a) Petitioner, a Delaware corporation, is engaged in business within this judicial circuit. The Court therefore has jurisdiction of the petition for review herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the Act.

(b) Upon proceedings had in said matter before the Board, as more fully shown by the certified record filed herewith, the Board on August 11, 1943, duly stated its findings of fact and conclusions of law, and issued an order directed to petitioner, and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Republic Aviation Cor-

*Respondent's Answer to Petition for Review and
Request for Enforcement*

2089

poration, Babylon Township, Suffolk County, New York, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

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(b) In any other manner interfering with, retraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Sam Stone, Robert Katz, Robert Bobrow, and Raymond Kahler immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole Sam Stone, Robert Katz, Robert Bobrow, and Raymond Kahler for any loss of pay they have suffered by reason of the respondent's

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*Respondent's Answer to Petition for Review and
Request for Enforcement*

discrimination against them, by payment to each of them of a sum of money equal to the amount which he would normally have earned as wages from the date of his discriminatory discharge to the date of the respondent's offer of reinstatement, less his net earnings during that period;

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(c) Rescind immediately the rule against solicitation insofar as it prohibits union activity and solicitation on company property during the employee's own time;

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(d) Immediately post in conspicuous places throughout its plant in Babylon Township, Suffolk County, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and (3) that the employees of the respondent are free to become and remain members of International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

(e) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(c) On August 11, 1943, the Board's decision and order was duly served upon petitioner.

*Respondent's Answer to Petition for Review and
Request for Enforcement*

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(d) Pursuant to Section 10 (e) and (f) of the Act, the Board is certifying and filing with this Court a transcript of the entire proceedings before the Board, including the pleadings, testimony and evidence, findings of facts, conclusions of law, and order of the Board.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and of the certified record to be served upon petitioner; and that this Court take jurisdiction of the proceedings and of the questions determined therein, and make and enter upon the pleadings, evidence, and proceedings set forth in the said record and the order made thereon, a decree denying the petition to review and enforcing in whole said order as set forth in paragraph (3) above, and requiring petitioner, and its officers, agents, successors, and assigns to comply therewith.

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NATIONAL LABOR RELATIONS BOARD,
By: /s/ HOWARD LICHTENSTEIN,
Howard Lichtenstein,
Assistant General Counsel.

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Dated at Washington, D. C., this 25th day of September
1943.

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*Respondent's Answer to Petition for Review and
Request for Enforcement*

DISTRICT OF COLUMBIA, ss:

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Howard Lichtenstein, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, respondent herein, and that he is authorized to and does make this verification on behalf of said Board; that he has read the foregoing answer and request for enforcement and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

/s/ HOWARD LICHTENSTEIN,
Howard Lichtenstein,
Assistant General Counsel.

Subscribed and sworn to before me this 25th day of
September 1943.

[SEAL]

/s/ JOSEPH W. KULKIS,
Notary Public, District of Columbia.

2100

My Commission expires April 15, 1947.

**Order and Stipulation Designating Contents of the
Record on Appeal**

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

REPUBLIC AVIATION CORPORATION,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD,

2102

Respondent.

ORDER

Upon stipulation of the parties and due consideration having been had, it is hereby

ORDERED, that in printing the Record in the above entitled case only those matters set forth in the Stipulation annexed hereto and made a part hereof shall be included in the printed Record.

2103

IT IS FURTHER ORDERED, that those portions of the original Record not printed shall be deemed part of the Record before the Court and may be considered by the Court and referred to by the parties.

Dated: October 29, 1943.

LEARNED HAND (sgd.)

*Judge, United States Circuit Court of
Appeals for the Second Circuit*

2104 *Order and Stipulation Designating Contents of the
Record on Appeal*

UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

REPUBLIC AVIATION CORPORATION,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD,

Respondent.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys in the above-entitled matter that, in printing the transcript of record herein, the following portions of the certified record shall be printed:

1. Fourth amended charge.

2. Complaint.

3. Answer.

4. Commerce stipulation.

5. The following portions only of the stenographic transcript of testimony of the hearing held at New York, New York, before Josef L. Hektoen, Trial Examiner, on April 15, 16, 19, 20, 21 and 22, 1943 (all references are inclusive):

Page	Line	to	Page	Line
1	1		1	25
6	9		8	4
11	7		53	21

*Order and Stipulation Designating Contents of the
Record on Appeal.*

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<i>Page</i>	<i>Line</i>	<i>to</i>	<i>Page</i>	<i>Line</i>
60	9		83	16
87	8		130	20
132	1		154	5
158	1		195	11
197	5		224	18
225	11		226	16
227	6		229	4
230	5		231	9
232	25		236	18
238	11		258	7
259	13		260	12
261	4		339	13
342	8		355	24
356	11		380	6
380	17		388	23
389	23		415	11
421	7		422	4
422	21		442	15
443	17		468	7
471	9		520	3
521	1		532	2
533	7		581	9
583	15		592	17
593	7		678	2
682	9		726	5
726	22		730	18
732	5		773	21
775	1		802	18
806	16		895	2
897	7		916	13
917	7		919	5
920	3		921	8
923	1		928	8
930	2			

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*Order and Stipulation Designating Contents of the
Record on Appeal*

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930	21		933	22
934	18		936	16
973	13		973	24
980	1		980	5

6. Board's Exhibits 3, 3A, 4, 4A, 5, 5A, 6, 6A, 7A, 7B, 7C, 7D, 8A, 8B, 8C, 8D, 9, 10A, 11, 13, 14 and 16.

2111

7. Respondent's Exhibits 3, 4, 5 and 8.

8. Intermediate report of Trial Examiner, Josef L. Hektoen, dated May 21, 1943.

9. Petitioner's exceptions to intermediate report.

10. Order transferring case to National Labor Relations Board, dated May 24, 1943.

11. Decision and order of the National Labor Relations Board, dated August 11, 1943.

2112

12. Petitioner's petition to review and set aside order of the National Labor Relations Board.

13. Respondent's answer to petition for review, and request for enforcement.

14. Order and stipulation designating contents of the record on appeal.

15. Order dispensing with the printing of certain exhibits.

16. Certificate of National Labor Relations Board.

*Order and Stipulation Designating Contents of the
Record on Appeal*

2113

IT IS FURTHER STIPULATED AND AGREED that the portions of the transcript and exhibits not printed shall be deemed part of the record before the Court, and may be considered by the Court and referred to by the parties; and that either party shall have the right to have any portion of said transcript and exhibits printed and included in the printed record, in the event that appeal is later taken.

Dated: New York, N. Y., October 28, 1943.

DONOVAN, LEISURE, NEWTON & LUMBARD (sgd)

2114

DONOVAN, LEISURE, NEWTON & LUMBARD,
Attorneys for Petitioner.

NATIONAL LABOR RELATIONS BOARD

By HOWARD LICHTENSTEIN (sgd)

HOWARD LICHTENSTEIN,
Assistant General Counsel.

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Order Dispensing With the Printing of Certain Exhibits

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

REPUBLIC AVIATION CORPORATION,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD,

Respondent.

2117

Upon the subjoined consent of the undersigned attorneys for the respective parties, it is hereby

ORDERED that the chart representing the factory organization of the Farmingdale plant of Republic Aviation Corporation received in evidence at the hearing, Board's Exhibit No. 10B, need not be printed in the record on appeal, and that upon the argument of the appeal herein only the original of said chart as introduced in evidence need be handed up to this Court, and it is

2118

FURTHER ORDERED that Board's Exhibit No. 12 (Republic Handbook, dated January, 1943), Board's Exhibit No. 15 ("Steward" button), Respondent's Exhibit No. 1 (Republic Handbook, dated January, 1943), Respondent's Exhibit No. 6 (Republic Handbook, dated March, 1941) Union's Exhibit No. 1 ("UAW-CIO" Button) and Union's Exhibit No. 2 ("UAW-CIO" Button) be omitted from the printed record and that said exhibits be produced upon the argument of this appeal, and it is

Order Dispensing With the Printing of Certain Exhibits 2119

FURTHER ORDERED, that the provisions of Rule XIII, subdivision 5; and Rule XXXII of the Rules of this Court whereby three copies of unprinted exhibits are to be furnished, in so far as they apply to the above preceding paragraphs, be and hereby are dispensed with, and it is

FURTHER ORDERED, that Respondent's Exhibit No. 7 (Kress Foremanship Fundamentals, Chapter 6, Handling Grievances) need not be printed in the record on appeal and that upon the argument of the appeal herein three copies of said exhibit as introduced in evidence be handed up to the Court. 2120

Dated: New York, N. Y., October 29, 1943.

LEARNED HAND (sgd)
*Judge, United States Circuit Court of
 Appeals for the Second Circuit.*

We hereby consent to the making and entry of the above Order.

Dated: New York, N. Y., October 18, 1943.

D. L. N. & L. (sgd)
 DONOVAN, LEISURE, NEWTON & LUMBARD,
 Attorneys for Petitioner. 2121

Dated: Washington, D. C., October 23, 1943.

NATIONAL LABOR RELATIONS BOARD
 By HOWARD LICHTENSTEIN (sgd)
 HOWARD LICHTENSTEIN,
 Assistant General Counsel.

2122

Certificate of the National Labor Relations Board

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

REPUBLIC AVIATION CORPORATION,
Petitioner,

v.

2123

NATIONAL LABOR RELATIONS BOARD,
Respondent.

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by the National Labor Relations Board, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board entitled, "In the Matter of Republic Aviation Corporation and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO", the same being Case No. C-2621 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

2124

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony before Josef L. Hektoen, Trial Examiner for the National Labor Relations Board, together with all exhibits introduced in evidence.

(2) Copy of Intermediate Report of Trial Examiner Hektoen, dated May 21, 1943.

Certificate of the National Labor Relations Board

2125

(3) Copy of order transferring case to the Board, dated May 24, 1943.

(4) Copy of respondent's letter, dated March 26, 1943, requesting an extension of time for filing exceptions to Intermediate Report.

(5) Copy of telegram, dated May 29, 1943, granting all parties an extension of time for filing exceptions to Intermediate Report.

(6) Copy of respondent's letter, dated June 1, 1943, requesting oral argument.

2126

(7) Copy of respondent's exceptions to Intermediate Report.

(8) Copy of notice of hearing for purpose of oral argument, dated June 25, 1943.

(9) Copy of notice of postponement of oral argument, dated June 26, 1943.

(10) Copy of decision and order issued by the National Labor Relations Board, August 11, 1943, with Intermediate Report annexed, together with affidavit of service thereon and United States Post Office return receipts thereof.

2127

IN TESTIMONY WHEREOF the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 25th day of September, 1943.

NATIONAL LABOR RELATIONS BOARD

/s/ JOHN E. LAWYER

John E. Lawyer

Chief, Order Section

(SEAL)

[fol. 710] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT, OCTOBER TERM, 1943

No. 287

(Argued February 28, 1944. Decided March 22, 1944.)

REPUBLIC AVIATION CORPORATION, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

Before: L. Hand, Swan and Augustus N. Hand, Circuit
Judges

On petition by an employer to review an order of the National Labor Relations Board, directing it to "cease and desist" from discouraging membership in a union and, as affirmative action, to reinstate four employees.

J. Edward Lumbard Jr., for the petitioner.

Howard Lichtenstein, for the respondent.

[fol. 711] L. HAND, *Circuit Judge*:

This case raises two questions. The first is whether the Board has power to forbid an employer, who has promulgated a rule, generally forbidding solicitation of any kind in his plant, to apply it to prevent electioneering for a union during the lunch hour. The second is whether the Board may compel an employer whose plant has not yet been "organized," to allow employees to wear "shop steward" buttons while at work, or whether he may confine the wearing of such buttons to those who are "stewards" of a union of his own employees. The first question is to be distinguished from those situations in which the employer invokes such a rule, not to preserve his business from the agitation and disturbance which will follow upon electioneering on the premises, but as a means of preventing the unionization of his employees. The examiner in the case at bar had found that the company had discharged one of the four employees in question, Stone, because of hostility to his efforts to organize the plant. The Board reversed this finding, and for that reason the question comes to us stark and bare; whether the Board may declare that the

enforcement of the rule without any animus against unions, general or particular, may be an "unfair labor practice." As the courts have already dealt with it in several decisions, it will be best to consider these before stating our own views.

The first is a square holding by the Sixth Circuit (*Midland Steel Products Co. v. N. L. R. B.*, 113 Fed. (2) 800, 805, 806), that a rule which forbids "solicitation" in a plant is "reasonable," that the question is one of "law," and that it is for the court, even when the employer invokes it, not against "solicitation" during working hours, but during the lunch hour. The second decision is of the Fifth Circuit [fol. 712] (*N. L. R. B. v. Williamson-Dickie Manufacturing Co.*, 130 Fed. (2) 260, 267, 268). The Board had held that the company discharged one, Meek, "discriminatorily," and the court reversed this finding as unsupported by any evidence. However, Meek had concededly violated a rule which forbade circulating petitions in the plant, by getting signatures during the lunch hour upon a petition authorizing the appointment of an attorney for the employees to recover under the Fair Labor Standards Act. Even if the employer did not, as the court found, use the rule as a cover to stop union agitation, nevertheless Meek had been discharged for refusing to obey it; and it followed that the court, in justifying the discharge, necessarily held that the rule was valid. It is true that the Board (35 N. L. R. B. 1220, 1245-1248) did not pass upon the validity of the rule, since it was not obliged to do so once it found the employer had used it improperly; yet we can scarcely call the decision merely a dictum in this aspect. Unless the court meant to hold that the rule was inevitably valid, it should have remanded the case to the Board to pass upon it in the existing circumstances. *National Labor Relations Board v. William Davies Co.*, 135 Fed. (2) 179, 182 (C. C. A. 7), does not raise the point because the employee electioneered during working hours, a very different matter. In *National Labor Relations Board v. Denver Tent & Awning Co.*, 138 Fed. (2) 410, the Tenth Circuit affirmed the Board's finding that the enforcement of such a rule had been invalid, but only because it found that it had been passed in order "to discourage membership in the local union." The court apparently assumed, as a general proposition, that such rules, if neither adopted, nor applied, in hostility to unions, were lawful; and perhaps by implication that they were beyond

the reach of the Board. The same is true of *Carter Carburator Co. v. National Labor Relations Board*, 140 Fed. (2) [fol. 713] (C. C. A. 8). In *National Labor Relations Board v. Cities Service Oil Co.*, 122 Fed. (2) 149, we held that a shipowner must give passes to union representatives to board ships in order to learn what grievances, if any, the crew might have, that being the only effective way open to secure redress. It is true that we also provided that the passes should be forfeited if their users took the opportunity while on board to solicit new members or to collect dues. However, our decision is not relevant here. The representatives who sought the passes were not members of the crews, and had no right to be on the ships by virtue of their employment, as Stone had a right to be in the factory in the case at bar. Whether a union representative shall be allowed to board a vessel, or enter a plant, merely to electioneer or to collect dues, is one thing; whether an employee, already lawfully in the plant, shall be forbidden during his lunch hour to try to persuade his fellows to join the union, is another. All that we held was that electioneering and collecting dues on board ship "were not shown by the Board to have been required 'for the purpose of collective bargaining or other mutual aid or protection' even if they are guaranteed under Section 7 under some circumstances," (p. 152).

Thus it appears that there is no settled body of decision against the Board's order, and we feel ourselves free to consider the question as *res integra*. The question is what is often called a "mixed question of law and fact"; and it is true that it comprises, or should comprise, two quite different determinations: (1.) what in fact will be the prejudice to the interests of the employer in allowing electioneering to go on during lunch hours, and what will be the benefit to the employees; and what will be his benefit and their prejudice in disallowing it; (2.) whether the benefit shall prevail over the prejudice, or vice versa. The language [fol. 714] of § 8 is too indefinite to allow the tribunal which enforces it to avoid the second of these inquiries; it is the same question that often arises in the law of torts: *e. g.* negligence, trade-marks, unfair trade, indeed all questions which depend upon what conduct is "reasonable." In all these the court balances the interests against each other, and awards priority as seems to it just. In the first determination: *i. e.* what actually is the prejudice and

what the benefit, the Board has an acquaintance with the subject matter greater than ours; and while in the case at bar it did not take evidence upon the issue, in matters involving general familiarity with the conditions of industry it may draw upon that acquaintance, certainly if it gives the employer an opportunity to present his own side in any specific case. In the case at bar it referred to certain of its earlier decisions in which it had held that the discussion of unionism and collective bargaining—including, we assume, electioneering—in the plant, if not during working hours, was permissible. *In Re Denver Tent & Awning Co.*, 47 N. L. R. B. 586; *In Re United States Cartridge Company*, 47 N. L. R. B. 896; *In Re Carter Carburetor Co.*, 48 N. L. R. B. 354. We have examined these, but we cannot find in them any statement of the effects upon the employees of denying them the privilege of such discussion, or upon the employer of granting it; only a general conclusion that it is reasonable to allow the discussion to go on.

Such a finding does not enable us to distinguish that part of the determination which lies within our powers of review—the appraisal of the conflicting interests and the award of priority between them—from that part which is wholly the Board's—the ascertainment of the facts. Nevertheless, this does not require us to send the case back for specific findings as to those facts. The problem is a general one, applying to industry at large, although of course it [fol. 715] may have different aspects in different factories. As we have said, the Board may draw upon its general acquaintance in dealing with such conditions; that is one of its most important functions. If the employer wishes to show what are the results in his specific case, he must do so at the hearings. On this record, we are certainly not called upon, nor should indeed be justified, to consider the question of law: i.e. the priority to be awarded between the conflicting interests, which lies enmeshed in the mixed question that is involved. And this is particularly true, because, even if by specific findings the legal question were brought out clear and definite, we should still have to give presumptive validity to the Board's decision. For we understand that on such issues it is only in cases where we believe that there is no reasonable warrant for the priority actually awarded that we may intervene. For these reasons we affirm the order as to Stone.

The second question is the discharge of the three employees who wore shop stewards' badges in the factory while the plant was not organized, and who were discharged because they would not take them off. The Board found that wearing a steward's button did not represent that the employer either approved or recognized the union in question as the representative of its employees. We are certainly in no position to gainsay that finding; it was preeminently one for those versed in trade-union lore. Moreover, the Board found that there was no evidence that the buttons had in fact deceived any of the employees who saw them. Conceivably, there might be those who would in this way be led to believe that the plant had been unionized without their knowing it, and who might be induced to join for that reason; but, so far as we can see, that was most unlikely. In any event it is a possibility whose substance it [fol. 716] was certainly for the Board to detect, if it had any.

In the light of what we have already said, it becomes unnecessary to decide whether there was "substantial evidence" to support the finding that Bofinger, Doglione and Nepsee engaged in any unfair labor practices. The discharges, being for legitimate union activities, were basis enough for the order.

An enforcement order will pass.

SWAN, Circuit Judge, dissenting in part:

I disagree with so much of the opinion as relates to the discharge of Stone for violation of the company rule against soliciting of any type. Stone knew of the rule and knew that the company construed it to forbid union electioneering on the premises during non-working hours. He violated it deliberately in order apparently to make a test case. The Board held "that, in the absence of special circumstances, a rule prohibiting union activity on company property outside of working time constitutes an unreasonable impediment to self-organization, and that discharges for violation, thereof are discriminatory." A rule against electioneering on company premises is of course an impediment to unionization, whether applied during working or non-working hours; but only if it is an "unreasonable" impediment is it invalid.

Concededly it is a reasonable restriction during working time. There is not much judicial authority, but all the judges who have previously considered such a rule, appear to have thought it also reasonable when applied to non-working hours. The reasons for this view are well expounded by Judge Allen in the *Midland Steel Products* case, 113 F. 2d 800, at 805-6. Solicitation, argument and the hurling of epithets by rival union organizers during the [fol. 717] lunch hour may reasonably be expected to carry over into working hours and to impair the concentration, cooperation and harmony which are essential to efficiency and safety in performance of work in a manufacturing establishment. Against these considerations the Board has advanced no arguments. Nor has it made any findings that electioneering outside the company's premises would be so difficult as to make the rule unreasonable as applied to this particular plant. In the absence of some such special circumstance I think the rule should be held valid. The Board, however, by its ipse dixit and without stating reasons seems to have inverted the process and to require the employer to show special circumstances to justify the rule. My colleagues think this is within the Board's exclusive province. I cannot agree, for I am unable to see why the Board is supposed to have more competence than the courts to pass upon the reasonableness of the rule in the absence of evidence tending to show that it unduly interferes with the employees' right to form, join or assist labor organizations.

[fol. 718] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPUBLIC AVIATION CORPORATION, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent.

NOTICE OF SUBMISSION OF DECREE

To: Messrs. Donovan, Leisure, Newton & Lumbard, 2 Wall
Street, New York 5, New York

Please take notice that on April 6, 1944, the proposed decree, a copy of which is annexed hereto and made a part hereof, drafted pursuant to this Court's opinion of March

22, 1944, will be transmitted to the Judges of the United States Circuit Court of Appeals for the Second Circuit by the Clerk for signature.

(Signed) Malcolm F. Halliday, Associate General Counsel, National Labor Relations Board.

Dated: March 27, 1944.

[fol. 719] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPUBLIC AVIATION CORPORATION, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD; Respondent.

On Petition to Review and on Request for Enforcement of
an Order of the National Labor Relations Board

Decree

Republic Aviation Corporation having petitioned this Court to review and set aside an order of the National Labor Relations Board, and the National Labor Relations Board having requested enforcement of the said order, and this Court having considered the said petition and request and having issued its decision on March 22, 1944, enforcing said order, it is hereby

Ordered, adjudged and decreed that the petition to review and set aside the said order of the National Labor Relations Board, be and it is hereby denied, and that the order of the said National Labor Relations Board be, and it is hereby enforced in full.

It is further ordered, adjudged, and decreed that as directed by the said National Labor Relations Board:

Republic Aviation Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, or in any other labor or [fol. 720] ganization of its employees, by discharging or refusing to reinstate any of its employees, or in any other

manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the Act:

(a) Offer to Sam Stone, Robert Katz, Robert Bobrow, and Raymond Kahler immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole Sam Stone, Robert Katz, Robert Bobrow, and Raymond Kahler for any loss of pay they have suffered by reason of petitioner's discrimination against them, by payment to each of them of a sum of money equal to the amount which he would normally have earned as wages from the date of his discriminatory discharge to the date of petitioner's offer of reinstatement, less his net earnings during that period;

(c) Rescind immediately the rule against solicitation insofar as it prohibits union activity and solicitation on company property during the employees' own time;

(d) Immediately post in conspicuous places throughout its plant in Babylon Township, Suffolk County, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees [fol. 721] stating: (1) that petitioner will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Decree; (2) that petitioner will take the affirmative action set forth in paragraphs 2-(a), (b), and (c) of this Decree; and (3) that the employees of petitioner are free to become and remain members of International Union United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, and that petitioner will not discriminate against any em-

ployee because of membership in or activity on behalf of that organization;

(e) Notify the Regional Director for the Second Region of the National Labor Relations Board in writing, within ten (10) days from the date of this Decree, what steps petitioner has taken to comply herewith.

Learned Hand, Judge, United States Circuit Court of Appeals for the Second Circuit; Thomas W. Swan, Judge, United States Circuit Court of Appeals for the Second Circuit.

Dated April 6, 1944.

[fol. 722] [Endorsed:] Republic v. N. L. R. B. Decree. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 6, 1944. Alexander M. Bell, Clerk.

[fol. 723] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 724] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1944.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. _____

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U. S.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1944

REPUBLIC AVIATION CORPORATION,

Petitioner,

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT

J. EDWARD LUMBARD, JR.,

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CITATIONS

Cases:

Boeing Airplane Co. v. National Labor Relations Board, 140 F. (2d) 423 (C. C. A. 10)

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Midland Steel Products Co. v. National Labor Relations Board, 113 F. (2d) 800 (C. C. A. 6) 7, 8, 11n

National Labor Relations Board v. Denver Tent & Awning Co., 138 F. (2d) 410 (C. C. A. 10) 8

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1 15n

National Labor Relations Board v. Link-Belt Co., 311 U. S. 584 31

National Labor Relations Board v. Waterman Steamship Corp., 309 U. S. 206 10

National Labor Relations Board v. Williamson-Dickie Mfg. Co., 130 F. (2d) 260 (C. C. A. 5) 7, 8

Statute:

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151 *et seq.*) 2, 10, 13

IN THE
Supreme Court of the United States,
OCTOBER TERM, 1944

No.

REPUBLIC AVIATION CORPORATION,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT**

Republic Aviation Corporation, a Delaware corporation, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Second Circuit entered April 6, 1944 (R. 716-718), denying petitioner's petition to review and set aside an order issued by the National Labor Relations Board against the petitioner and enforcing said order in full.

Opinions Below

The opinion of the Circuit Court of Appeals (R. 710-715) is reported in 142 Fed. (2d) 193. The decision and order of the Board (R. 673-679) are reported in 51 N.L.R.B. 1186.

Jurisdiction

The decree of the Circuit Court of Appeals (10-716-718) was entered on April 6, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

Questions Presented

1. Petitioner promulgated a rule prohibiting solicitation of any type in its factory or offices. The sole purpose of the rule was to promote employee efficiency and harmony, and it was enforced impartially without animus against unions, general or particular. The question is whether the Board erred in finding that petitioner violated Section 8(1) and (3) of the National Labor Relations Act by applying the rule to prevent solicitation in its plant for union membership during the employees' non-working time.

2. No union having been recognized at its plant, petitioner forbade its employees to wear union "shop steward" buttons while at work. The question is whether the Board erred in finding that petitioner violated Section 8(1) and (3) of the Act by adopting and enforcing this prohibition.

Statute Involved

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix.

1. A third question before the court below was whether substantial evidence supported the Board's finding that petitioner violated Section 8(1) of the Act through activities of three supervisory employees. The court found it "unnecessary to decide" this question (R. 714) on the ground that its holding on the first two issues justified enforcement of the Board's order. Petitioner contends that the court's decision of the first two questions was erroneous, and that it should have passed upon the third question:

Statement

After the usual proceedings under Section 10 of the Act, the Board issued its decision and order dated August 11, 1943 (R. 673-679).

The Facts.—The pertinent facts, as shown by the evidence may be summarized as follows:²

Petitioner's published rule, "Soliciting of any type cannot be permitted in the factory or offices," was adopted more than a year and a half before the commencement of any union activity in the plant (R. 38-39, 41, 60, 204-205). With a rapidly expanding force engaged in vital war production (R. 541),³ petitioner found it necessary—in the interests of efficiency and harmony—to prevent personal harassment of the employees by solicitors for a host of organizations and causes (R. 42-47, 53-56, 58, 446-452, 461-462). The no-solicitation rule applied to both working and non-working time and was enforced impartially in all cases to the best of petitioner's ability⁴ (R. 30-31, 36-38, 42-45, 48-49, 54-58, 63-64, 446-452, 455-456, 460-463, 472-473, 498-500).

On January 20, 1943, petitioner discharged an employee, Stone, for soliciting (during the lunch period) memberships in International Union, United Automobile Aircraft & Agricultural Implement Workers of America, U. A. W. C. I. O. (hereafter called the U. A. W.) (R. 56, 74, 291). Although Stone had been warned for a previous violation of the solicitation rule, he had insisted that he would continue to disobey it (R. 88-90, 283-284).

2. Reference is omitted to the facts concerning the allegedly unlawful activities of three supervisory employees. As already noted, the court below did not review the Board's findings in this respect.

3. Petitioner is exclusively occupied in producing military aircraft (the P-47 Thunderbolt) for the United States Army Air Corps (R. 48).

4. The rule did not bar full and free employee discussion on all subjects, including unions and their affairs (R. 556, 560, 563).

About mid-January of 1943, four employees began to wear U. A. W. "shop steward" buttons in petitioner's plant (R. 103, 113, 154, 183, 237). At that time the U. A. W. had chartered no local at the plant, nor had it sought recognition as employee-bargaining representative (R. 158, 555). After careful study of the matter with counsel, petitioner's top management concluded that petitioner could not properly ignore or acquiesce in the wearing of the buttons, since the practice (1) was a misrepresentation of the wearers' true status in the plant, (2) might well be held to constitute illegal assistance to the U. A. W. as against rival unions, and (3) threatened interference with the operation of petitioner's established grievance procedure (R. 551-555). Petitioner fully discussed with the four employees the reasons for its decision to ban the "shop steward" badges, and warned them that violation of the ban would result in discharge (R. 556-565). Three of the four employees nevertheless persisted in wearing the buttons, and were consequently dismissed (R. 123, 198, 242).

The Board's Findings and Order—The Board found in effect that the solicitation rule had not been discriminatorily applied to Stone (R. 675), but that the promulgation of the rule and its enforcement outside of working time was "in the absence of special circumstances" *per se* a violation of Section 8(1) and (3) of the Act (R. 674-675).

The Board also found in substance that petitioner's ban against steward buttons did not result from any animus against the U. A. W. (R. 676), but that it did curtail "the right of employees to wear union insignia at work" as a "reasonable and legitimate form of union activity", and therefore violated the Act (R. 675-676).⁵

5. Petitioner made clear that it did not object to the wearing of any other type of union button (R. 561-563).
6. The Board also found that the activities of three supervisory employees constituted a violation of Section 8(1) of the Act (R. 677).

The Board's order *inter alia* required reinstatement with back pay for Stone and the three other discharged employees, and the rescission of the solicitation rule "insofar as it prohibits union activity and solicitation on company property during the employee's own time" (R. 677-679).

Thereafter petitioner petitioned the court below to review and set aside the Board's order (R. 680-687). The Board answered, requesting enforcement of its order (R. 695-700).

Decision of the court below—The court recognized that the question of the solicitation rule came to it "stark and bare", uncomplicated by any anti-union animus (R. 710-711); and it found that the question comprised two parts: (1) of fact, as to the prejudice to the employer and the benefit to the employees in permitting union solicitation during non-working time, and, conversely, the respective benefit and prejudice in forbidding it, and (2) of law, "whether the benefit shall prevail over the prejudice, or vice versa" (R. 712). Deeming it to be the Board's function to determine the fact part of the question, the court further held that, although the Board had made no specific findings as to the respective benefit and prejudice either in the case at bar or in other cases involving the question, the Board could nevertheless "draw upon its general acquaintance in dealing with such conditions", and, in the absence of specific evidence adduced by the employer, decide both the fact and law parts of the question (R. 712-713). The court concluded that it could not review the Board's determination of the law question (R. 713).

With respect to the prohibition against the wearing of steward buttons, the court appears to have held the reasonableness of this prohibition to be a question wholly within the Board's province (R. 714).

The Court sustained the Board's order in full, without passing upon the question whether the activities of three supervisory employees violated the Act (R. 714).

Judge Swan, dissenting on the issue of the solicitation rule, held in effect that the burden was upon the Board to show why the rule was unreasonable as applied particularly to petitioner's plant, and that, since the Board had made no such findings, the rule should be held valid (R. 714-715).

Specification of Errors to be Urged

The Circuit Court of Appeals erred:

1. In failing to hold that petitioner's solicitation rule was valid, and that application of the rule to union solicitation in the plant during non-working time did not constitute a violation of the Act.

2. In holding that it was without power to review the Board's determination of the question of law as to the reasonableness of the solicitation rule.

3. In failing to hold that petitioner's prohibition of the wearing of union steward buttons in its plant was valid.

4. In holding, in effect, that it was without power to review the Board's determination of the question of law as to the reasonableness of the prohibition of the wearing of steward buttons.

7. Petitioner also urges, of course, that the court should have decided whether there was substantial evidence to support the Board's finding that the activities of the three supervisory employees violated Section 8(1) of the Act (see fn. 1, p. 2, *supra*).

REASONS FOR GRANTING THE WRIT

I

The decision below is in conflict with decisions of other Circuit Courts of Appeals.

With respect to the solicitation rule, the court below stated the question to be

whether the Board has power to forbid an employer, who has promulgated a rule, generally forbidding solicitation of any kind in his plant, to apply it to prevent electioneering for a union during the lunch hour. (R. 710).

The court further noted that the question came to it

stark and bare: whether the Board may declare that the enforcement of the rule *without any animus against unions, general or particular*, may be an "unfair labor practice" (R. 710-711). [Italics supplied].

The court answered the question in the affirmative.

In this respect, the holding below is squarely in conflict with decisions of the Fifth and Sixth Circuit Courts of Appeals; and the principles of these decisions have been endorsed by the Eighth and Tenth Circuits in three very recent cases.

In *Midland Steel Products Co. v. National Labor Relations Board*, 113 F.(2d) 800, 805, 806 (1940), the Sixth Circuit expressly sustained the validity of the same type of solicitation rule as presented in the instant case. In *National Labor Relations Board v. Williamson-Dickie Mfg. Co.*, 130 F. (2d) 260, 267, 268 (1942), the Fifth Circuit by necessary implication upheld the validity of such a rule, as the court below recognized (R. 711); and in *LeTourneau Co. of Georgia v. National Labor Relations Board*, decided June 23, 1944, the Fifth Circuit squarely affirmed an em-

ployer's right to enforce a similar rule, which (as in the instant case) was not designed to impede union organization and not discriminatorily applied.

This question has lately been considered by the Tenth Circuit in *National Labor Relations Board v. Denver Tent & Awning Co.*, 138 F. (2d) 410, 441 (1943), and *Boring Airplane Co. v. National Labor Relations Board*, 140 F. (2d) 423, 435 (1944), and by the Eighth Circuit in *Carter Carburetor Corp. v. National Labor Relations Board*, 140 F. (2d) 714, 716 (1944). All three decisions, citing the *Midland Steel* and *Williamson-Dickie* cases with approval, subscribe to the general proposition that such a rule as here involved, if adopted and applied without hostility to unions, is valid.

As Judge Swan noted in his dissenting opinion (R. 715), "all the judges who have previously considered such a rule, appear to have thought it also reasonable when applied to non-working hours."

Further, the decision below, insofar as it disclaims power to consider the question of law concerning the solicitation rule, is plainly in conflict with the *Midland Steel* case (113 F. (2d) 800 (C. C. A. 6)), where the court held (p. 805) —

Whether this rule was reasonable is a question of law for the court to determine. (Cases cited).

II

The decision below departs from the established principles of judicial review under the Act.

The court below recognized that the question of the validity of the solicitation rule —

is what is often called a "mixed question of law and fact"; and it is true that it comprises, or should comprise, two quite different determinations: (1) what in fact will be the prejudice to the

interests of the employer in allowing electioneering to go on during lunch hours, and what will be the benefit to the employees; and what will be his benefit and their prejudice in disallowing it; (2) whether the benefit shall prevail over the prejudice, or vice versa. (R. 712).

The first determination, according to the court, being an ascertainment of facts, was properly for the Board; the second determination, being one of law, was subject to court review. The court then pointed out that the Board had not made any specific findings, either in the case at bar or in other cases involving this issue, as to the respective benefit and prejudice to employer and employees in allowing or forbidding union solicitation during non-working hours. But, said the court in effect, such specific findings are not necessary: in dealing with the problem, the Board "may draw upon its general acquaintance" with conditions in industry (R. 713). The court next indicated that the burden is upon the employer to show "the results [as presumably, of non-working-time solicitation] in his specific case" (R. 713). The court then concludes

On this record, we are certainly not called upon, nor should indeed be justified, to consider the question of law; i. e. the priority to be awarded between the conflicting interests, which lies unmeshed in the mixed question that is involved. (R. 713).

It is clear that in this case the court, after paying lip-service to its duty to review the conceded question of law, has proceeded wholly to evade that duty on the asserted grounds, (1) that the Board failed to make findings sufficient to enable the court to distinguish the law question, and (2) that the Board may lay down a general principle based upon its "acquaintance with the subject matter" which, in the absence of specific evidence to the contrary,

—settles both question of fact and question of law.⁸ Even assuming *arguendo* that the court must (as the majority opinion suggests, R. 713) give “presumptive validity” to the Board’s decision where a legal question is clearly presented by specific findings of fact, there is surely no warrant for the court’s uncritical acceptance of a general legal conclusion made by the Board without reference to any discernible fact-findings.

The effect of the court’s decision is thus to abdicate its traditional right of review, and to confer upon the Board power finally to determine questions of law by its ipse dixit, without a shred of evidentiary support. Such an abdication is contrary to the intent of Section 10 (c) and (f) of the Act, and is a wide departure from the established principles of judicial review thereunder. As this Court said in *National Labor Relations Board v. Waterman Steamship Corp.*, 309 U. S. 206 (1940) at 208—

As it did in setting up other administrative bodies, Congress has left questions of law which arise

8. The untenable character of the Board’s contention (which the court sustained) that the employer must show “special circumstances” to justify this type of rule is well demonstrated in Judge Swan’s dissent (R. 714-715). After pointing out the inherent and obvious dangers in permitting union solicitation during the lunch hour, Judge Swan observed that the Board had neither advanced any counter-arguments, nor found that off-premises solicitation would be so difficult as to make unreasonable the application of the rule in petitioner’s plant. The dissenting opinion continues (R. 715)——

In the absence of some special circumstance I think the rule should be held valid. The Board, however, by its ipse dixit and without stating reasons seems to have inverted the process and to require the employer to show special circumstances to justify the rule. My colleagues think this is within the Board’s exclusive province. I cannot agree, for I am unable to see why the Board is supposed to have more competence than the courts to pass upon the reasonableness of the rule in the absence of evidence tending to show that it unduly interferes with the employees’ right to form, join or assist labor organizations.

before the Board—but not more—ultimately to the traditional review of the judiciary.

See also *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 597 (1941).

The lower court summarily dismissed the question of the prohibition against stewards' buttons, merely pointing out that the Board had not been impressed with certain of petitioner's reasons for adopting the prohibition. Here the court fell into the same error as in the case of the solicitation rule: it was either unable or unwilling to see that the same fundamental question of law underlay both issues, to wit, the reasonableness of petitioner's regulation of the conduct of its business.² In both situations, the court's

9. That the Board may not interfere with an employer's right to discharge employees for other than anti-union reasons, has been clearly stated by this Court. In *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937), Chief Justice Hughes, speaking for the majority of the Court, said (pp. 45-46):

The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. [Italics supplied].

Similarly, the Sixth Circuit has held in *Holland Steel Products Co. v. National Labor Relations Board*, 113 F. (2d) 800 at p. 805:

The employer in his right of control over the property and the employee is authorized to make reasonable rules for the conduct of the business; and the employee is bound to obey such reasonable rules as a part of his contract of hire.

refusal to accord petitioner its statutory right to a review raises an important question in the administration of the Act, which should be passed upon by this Court:

Conclusion

The decision of the court below conflicts on important questions with decisions of other circuit courts of appeals. In addition, the decision below represents a wide departure from the established principles governing review of orders of the Board, and thus raises an important public question.

For these reasons, we respectfully submit that this petition for a writ of certiorari should be granted.

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July 1, 1944.

Appendix

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151 *et seq.*):

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

SEC. 10 (c) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the

findings and order of the Board. * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of *coram vobis* or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. * * * Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

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No. 226

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CHARLES EDWARD OROPL
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IN THE

Supreme Court of the United States

October Term, 1944

REPUBLIC AVIATION CORPORATION,

Petitioner,

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR REPUBLIC AVIATION CORPORATION

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1944

No. 226

REPUBLIC AVIATION CORPORATION,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR REPUBLIC AVIATION CORPORATION

Opinions Below

The opinion of the court below (R. 710-715) is reported in 142 F. 2d 193. The decision and order of the National Labor Relations Board (R. 673-679) is reported in 51 N. L. R. B. 1186.

Jurisdiction

The decree of the court below (R. 716-718) was entered on April 6, 1944. The petition for a writ of certiorari was filed on July 5, 1944, and was granted on October 9, 1944 (R. 718). The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code (28 U. S. C. § 347(a)), as

amended by the Act of February 13, 1925, and upon Section 10(e) and (f) of the National Labor Relations Act (29 U. S. C. § 160(e) and (f)).

Statute Involved

The pertinent provisions of the National Labor Relations Act are set out in Appendix A.

Questions Presented

1. Petitioner promulgated a rule prohibiting solicitation of any type in its factory or offices. The sole purpose of the rule was to promote employee efficiency and harmony, and it was enforced impartially without animus against unions, general or particular. The question is whether, under the circumstances, the Board erred in finding that petitioner violated Section 8(1) of the Act by applying the rule to prevent solicitation for union membership in its plant during the employees' non-working time, and that petitioner violated Section 8(1) and (3) of the Act by discharging an employee who violated the rule.

2. No union having been recognized at its plant, petitioner forbade its employees to wear union "shop steward" buttons while at work. The question is whether, under the circumstances, the Board erred in finding that petitioner violated Section 8(1) of the Act by adopting and enforcing this prohibition, and that petitioner violated Section 8(1) and (3) of the Act by discharging three employees who refused to comply with the prohibition.¹

1. A further question in the case relates to the sufficiency of evidence to support the Board's finding that the activities of three supervisory employees violated Section 8(1) of the Act (R. 692). Since the court below expressly refrained from deciding it, this question is not presented here (R. 714).

Statement of the Case

1. The Facts

Petitioner, at its Babylon, Long Island, plant, is exclusively engaged in the manufacture of military aircraft (the P-47 Thunderbolt) for the United States Army Air Corps. (R. 12, 48). In the forepart of 1943, petitioner's working force was 70 or 80 times larger than in 1939; it had doubled since the summer of 1942 (R. 541). This growing concentration of well-paid employees inevitably attracted solicitation for a host of organizations and causes—many highly deserving, others of questionable or even fraudulent character (R. 45-47). The great number and endless variety of potential demands upon the employees' time and money is graphically revealed by the record (R. 42-45, 53-56, 58, 446-452, 461-462).

Confronted with this threat to efficiency and harmony in the plant, petitioner resolved to prevent personal harassment of the employees by solicitors for any purpose whatever. (R. 45-47). Its rule

Soliciting of any type cannot be permitted in the factory or offices

adopted some time prior to March 1941, was in that month published in a handbook given to all employees (Pet. Ex. 1; R. 38-39, 41).²

This rule was designed to eliminate the subjection of employees (usually in the presence of fellow-workers) to personal pressure and insistence that they contribute to, assist or join a particular cause or organization (R. 46-47), and its enforcement involved three basic principles: (1) no exception was made for any cause, no matter how meri-

² The publication of the rule antedated by more than a year and a half the commencement of union activity in the plant. (R. 204-205).

torious³ (R. 463-464, 544); (2) it was applied both to working and non-working time (R. 47); and (3) it did not bar full and free employee discussion of any subject, including unions and their affairs (R. 556, 560, 563). Faced with a great influx of new employees and frequent attempts to violate the rule (R. 47, 543-544), petitioner enforced it impartially in all cases to the best of its ability (R. 30-31, 36-38, 42-45, 48-49, 54-58, 63-64, 446-452, 460-463, 472-473, 498-500).

For some time prior to January 15, 1943, employee Sam Stone was engaged in soliciting memberships in International Union, United Automobile Aircraft & Agricultural Implement Workers of America, U. A. W.-C. I. O. (hereafter called U. A. W.) in petitioner's plant on his own time (R. 66, 276-278, 322-323). On January 15, his sectional supervisor noticed Stone distributing U. A. W. application cards during the lunch period (R. 283). The supervisor warned him that he was violating the solicitation rule and thus courting dismissal (R. 88-89, 284), but Stone, admitting that he knew the rule, insisted that he would continue to disobey it (R. 89-90). Stone persisted in soliciting for several days (R. 90, 289-291), and finally his supervisor—after consultation with and authorization from higher officials—discharged him on January 20 (R. 74, 288-291, 406-407).

On January 13, 1943, at a meeting of some 30 individuals (chiefly members of the U. A. W. "Republic Organizing Committee"), employees Stone, Katz, Bobrow, and Kahler were designated "shop stewards" (R. 66, 136, 183, 206-208, 247). At this time the U. A. W. had chartered no local at petitioner's plant, nor had it sought recognition as employee bargaining representative (R. 158, 555). All four employees already belonged to the Organizing Committee, and their functions as stewards differed in no discernible respect from their functions as committee members (R. 66, 102, 156-157, 204, 215-217, 246, 252-253).

3. Petitioner felt that any deviation from strict impartiality would have made progressively more difficult the enforcement of the rule (R. 464, 544).

On January 14, Katz and Stone began wearing in the plant buttons bearing the legend "UAW-CIO STEWARD" (Bd. Ex. 15, R. 67, 103, 113). A steward button was also displayed about the same time by employee Rosenkrantz, who was admittedly not a steward, but "had been told to wear the button" (R. 154, 557). The appearance of these insignia was reported on January 15 to A. L. Kress, Assistant to the President⁴, then absent from the plant (R. 551-552). Directing that no action be taken in his absence, Kress returned on January 19 to confer with other officials of petitioner and its counsel, John J. Ryan (R. 551-553). After careful study with counsel of the facts and the applicable law, petitioner concluded that it could not properly ignore or acquiesce in the wearing of the "steward" buttons, since the practice (1) was a misrepresentation of the wearers' true status in the plant, (2) might well be held to constitute illegal assistance to the U. A. W. as against rival unions, and (3) threatened interference with the operation of petitioner's established grievance procedure (R. 553-555).

Before taking action, however, Kress decided to ascertain the view-points of the employees involved (R. 555). Accordingly, on January 22, Kress and other officials held discussions with Rosenkrantz (R. 556-558) and with Katz⁵ (R. 559-562), at which these employees were requested to remove their steward buttons, and the reasons for petitioner's position were fully explained. Kress made clear to Katz that petitioner's objection related solely to the steward button, and that the wearing of any other type of U. A. W. button was entirely permissible (R. 561-562). Rosenkrantz agreed to comply with petitioner's request (R. 558) but Katz merely offered to remove his button until

4 Kress was charged with the formulation and administration of petitioner's industrial relations policies (R. 540).

5 Stone had been discharged two days before for violation of the solicitation rule, *supra*, p. 4.

he had consulted with U. A. W. officials (R. 561). Although explicitly warned of the penalty therefor (R. 562), Katz resumed wearing his button on the following day, and was in consequence discharged (R. 123).

Thereafter, on January 25 and 26 respectively, Bobrow and Kahler commenced wearing steward buttons in the plant (R. 183, 237). On January 26, Kress and other officials conferred at length with these employees, explaining the reasons for petitioner's policy in even greater detail than before (R. 562-565). As in his talk with Katz, so here Kress emphasized the complete propriety of any type of union button other than the steward insignia (R. 213, 241, 563). Although warned that further wearing of the buttons would result in their dismissal (R. 198, 242), Bobrow and Kahler announced unequivocally that they would persist in their course, which they regarded as proper under the Act (R. 190-191, 198, 240-241). Both continued to wear the buttons and both were discharged later in the day for refusal to comply with petitioner's order (R. 198, 242).

2. The Board's Findings and Order

The Board found in effect that the solicitation rule had not been discriminatorily applied to Stone (R. 675), but that the promulgation of the rule and its enforcement against union solicitation outside of working time was "in the absence of special circumstances" *per se* a violation of Section 8(1) of the Act, and that the discharge of Stone was a violation of Section 8(3) of the Act (R. 674-675).

The Board also found in substance that petitioner's ban against steward buttons did not result from any animus against the U. A. W. (R. 676), but that enforcement of the ban did curtail "the right of employees to wear union insignia at work" as a "reasonable and legitimate form of union activity", and therefore violated Section 8(1) and (3) of the Act (R. 675-676).

The Board's order *inter alia* required reinstatement with back pay for Stone, Katz, Bobrow, and Kahler, and

the rescission of the solicitation rule "insofar as it prohibits union activity and solicitation on company property during the employee's own time" (R. 677-679).

Thereafter petitioner petitioned the court below to review and set aside the Board's order (R. 680-687). The Board answered, requesting enforcement of its order (R. 695-700). On March 22, 1944, the court below held, one judge dissenting in part, that the Board's order should be enforced (R. 710-714, 714-715), and on April 16, 1944 it entered a decree accordingly (R. 716-718).

3. Decision of the Court Below

The court recognized that the question of the solicitation rule came to it "stark and bare", uncomplicated by any anti-union animus (R. 710-711); and it found that the question comprised two parts: (1) of fact, as to the prejudice to the employer and the benefit to the employees in permitting union solicitation during non-working time, and conversely, the respective benefit and prejudice in forbidding it, and (2) of law, "whether the benefit shall prevail over the prejudice, or vice versa" (R. 712). Deeming it to be the Board's function to determine the fact part of the question, the court further held that, although the Board had made no specific findings as to the respective benefit and prejudice either in the case at bar or in other cases involving the question, the Board could nevertheless "draw upon its general acquaintance in dealing with such conditions", and in the absence of specific evidence adduced by the employer, decide both the fact and law parts of the question (R. 712-713). The court concluded that, since the Board's findings failed to separate clearly the fact and law questions, it could not review the Board's determination of the law question (R. 713).

With respect to the prohibition against the wearing of steward buttons, the court appears to have held the reasonableness of this prohibition to be a question wholly within the Board's province (R. 714).

Judge Swan, dissenting on the issue of the solicitation rule, held in effect that the burden was upon the Board to show why the rule was unreasonable as applied particularly to petitioner's plant, and that, since the Board had made no such findings, the rule should be held valid (R. 714-715).

Specification of Errors to be Urged

The Circuit Court of Appeals erred:

1. In failing to hold that petitioner's solicitation rule was valid, and that application of the rule to union solicitation in the plant during non-working time did not constitute a violation of the Act.

2. In holding that it was without power to review the Board's determination of the question of law as to the reasonableness of the solicitation rule.

3. In failing to hold that petitioner's prohibition of the wearing of union steward buttons in its plant was valid.

4. In holding, in effect, that it was without power to review the Board's determination of the question of law as to the reasonableness of the prohibition of the wearing of steward buttons.

SUMMARY OF ARGUMENT

I

A. A determination of the question whether petitioner could lawfully forbid union solicitation in its plant during non-working time requires a careful appraisal and balancing of the conflicting interests involved. The important public interest in efficient production—particularly of vital war materials in war time—and in the safety and welfare of employees, and the parallel interest of the employer, should be weighed against the public interest in employee self-organization for collective bargaining. The Board's general doctrine condemning employer rules against solicitation in non-working time has been evolved without any attempt to weigh these opposing interests. In the instant case there is no evidence as to the importance to employee self-organization of intra-plant solicitation, and the Board made no findings either on this subject or on the question of prejudice to petitioner's efficient production if such solicitation were permitted. In the absence of any proper basis in the record, the Board's general conclusion may not be justified upon the theory of judicial notice. The Board has plainly reached its conclusion without due administrative procedure.

B. A consideration of (1) the history of employee self-organization, (2) the trend in current collective bargaining agreements, (3) the Congressional purpose behind the Act, and (4) the relevant decisions of the National Labor Relations Board and the National War Labor Board, indicates that the privilege of intra-plant solicitation is not, in the ordinary case, of particular significance in the protection of employee rights. On the other hand the permitting of such solicitation is fraught with potential, if not actual, danger to efficient production and employee safety. A

proper balancing of the conflicting interests justifies the prohibition of soliciting inside the plant in the absence of a showing that self-organization would be seriously impaired. No such showing is made in this case. There is no ground for the Board's finding that Stone's discharge was discriminatory, since the discharge resulted from the impartial application of petitioner's solicitation rule and was not motivated by hostility to the U. A. W.

11

Petitioner's decision to prohibit the wearing of U. A. W. steward buttons in its unorganized plant was based (1) upon its conviction that the condoning of the practice would give rise to the inference of some recognition by it of the U. A. W., and thus would constitute a violation of the neutrality toward employee organization affairs required by the Act, and (2) upon its apprehension that the appearance of employees purporting to hold the office of steward would raise, in the minds of supervisors and subordinate employees, question whether petitioner's established grievance procedure was being supplanted. The union steward is recognized in the labor relations field as being, among other things, the representative of labor in dealing with the employer, and his characteristic function is the adjustment with management of employee grievances. Petitioner freely permitted the wearing of other types of U. A. W. buttons, and there is no showing that the privilege of displaying the steward buttons would have legitimately aided the self-organization of the employees. The Board's failure to perform its required function of balancing the conflicting interests on this issue is underlined by its conclusion that the prohibition was a "curtailment" of the employees' right "to wear union insignia at work". In the circumstances of the case, this prohibition was reasonable as a matter of law.

ARGUMENT

I

Petitioner's no-solicitation rule, as applied to union solicitation in its factory or offices during non-working time, is reasonable and valid.

Without animus against unions, general or particular, petitioner had promulgated (in March 1941) and enforced a rule barring solicitation of any kind in its plant at any time; and in the course of impartial enforcement of the rule, petitioner (in January 1943) applied it without discrimination to an employee soliciting for his union during the lunch period. The Board does not complain of the reasonableness of the rule in general, but insists that, when applied to union solicitation in non-working time, it becomes "an unreasonable impediment to self-organization". We shall show: (A) that this general doctrine has been adopted by the Board and applied in this case in complete disregard of proper administrative procedure, that is, without any discernible consideration of, or fact-findings concerning, the important conflicting interests involved; and (B) that, absent any showing that petitioner's rule unduly interfered with self-organization, it is reasonable as a matter of law.

A

The Board's conclusion as to the solicitation rule is without support in the record, and rests on a policy formulated without due administrative procedure.

It is obvious that this issue involves, on the one hand, the public interest in employee self-organization for collective bargaining (Section 1 of the Act), and on the other hand, the public interest in uninterrupted production (particularly of vital war materials in time of war), in the efficient and economic operation of industry, and in the

safety and welfare of employees,⁶ which latter public interest is paralleled in many respects by the private interest of the employer in efficient and safe operation. Since the paramount purpose of the Act is to eliminate obstructions to "the free flow of commerce" (Section 1), its protection of employee self-organization must plainly stop short of the point where it impairs this purpose. Indeed, the Board itself has recognized limits to such protection, holding that an employer may prohibit union solicitation during working hours.⁷ The determination of how far union activity shall be protected calls for careful appraisal and balancing of the various interests above outlined.

The Board decisions evolving its doctrine respecting non-working time solicitation⁸ make no attempt to deal with

6. Carroll R. Daugherty, *Labor Problems in American Industry* (5th Ed., Boston 1941), pp. 14, 15.

7. See for example, *Matter of Peyton Packing Co.*, 49 N. L. R. B. 828, 843-844 (1943).

8. *Matter of Denver Tent & Awning Co.*, 47 N. L. R. B. 586 (1943), enf'd sub nom. *National Labor Relations Board v. Denver Tent & Awning Co.*, 138 F. 2d 410 (C. C. A. 10, 1943); *Matter of United States Cartridge Co.*, 47 N. L. R. B. 896 (1943); *Matter of Carter Carburetor Corp.*, 48 N. L. R. B. 354 (1943), enf'd sub nom. *Carter Carburetor Corp. v. National Labor Relations Board*, 140 F. 2d 714 (C. C. A. 8, 1944); *Matter of Piedmont Shirt Co.*, 49 N. L. R. B. 313 (1943), enf'd sub nom. *Piedmont Shirt Co. v. National Labor Relations Board*, 138 F. 2d 735 (C. C. A. 4, 1943); *Matter of Scullin Steel Co.*, 49 N. L. R. B. 405 (1943); *Matter of Peyton Packing Co.*, 49 N. L. R. B. 828 (1943), enf'd sub nom. *National Labor Relations Board v. Peyton Packing Co.*, 142 F. 2d 1009 (C. C. A. 5, 1944), cert. den. October 9, 1944.

None of these four Circuit Court of Appeals decisions supports the Board's general doctrine condemning rules against solicitation in non-working time. On the contrary, as shown *infra*, p. 26, the *Denver Tent*, *Carter Carburetor* and *Peyton Packing* decisions state that such rules are reasonable and lawful, if not adopted or applied with anti-union motive.

this basic problem. The Board's rationale is well exemplified in *Matter of Peyton Packing Co.*, 49 N. L. R. B. 828, 843-844, and may be fairly summarized as follows: Working time is for work, hence an employer may prohibit union solicitation during working hours; however, time outside working hours is an employee's time to use as he wishes without unreasonable restraint, although the employee is on company property, and therefore, the employer may not prohibit union solicitation on company property outside of working hours. Such superficial oversimplification of the problem wholly ignores the larger questions implicit in the case. Neither in the *Peyton Packing* case nor in any of the other decisions referred to, does the Board note any facts as to the relative importance to the employees of the privilege of soliciting inside the plant, nor does it seek to evaluate that privilege, nor does it consider the impact of the privilege upon that safety and efficiency in production in which the public and the employer alike have a vital interest. Failing any consideration of or findings on these questions, the decisions afford no basis for determining whether the Board has properly performed, or indeed whether it has discharged at all, its important function of striking a balance between the conflicting interests.

In the case at bar, the strong public interest, and petitioner's proper interest as well, in maintaining employee efficiency, safety and morale at the highest possible level, is self-evident. The proof shows that petitioner was engaged in vital war production; that its working force was expanding with great rapidity; that personal solicitation in myriad forms threatened employee harmony and efficiency; and that this threat could be met successfully only by prohibiting all personal solicitation *without exception* during both working and non-working time (*supra*, pp. 3-4). Against these considerations the Board advances no arguments, as Judge Swan points out in his dissenting

opinion below (R. 715); it merely dismisses them with the comment "the record discloses no special circumstances and [petitioner] advances no cogent reason, warranting extension of the prohibition to non-working time, when production and efficiency could not normally be affected by union activity" (R. 689).

On the question of the benefit to the employees of the privilege of soliciting inside petitioner's plant, the Board's decision is wholly silent. The trial examiner's report does, however, contain this statement: "The evidence indicates that many of [petitioner's] employees live long distances from [petitioner's] plant and that their homes are scattered over a wide area" (R. 638). Immediately after this "finding" the examiner sets out an excerpt from the testimony of Bobrow, which, being quoted out of its context, appears on its face to support the finding (*ibid*). However, a

9. Petitioner's handbook of regulations indicates that the employees' lunch period, from the time work ceased until it recommenced, was of only 30 minutes duration; and that employees were required to leave the plant as promptly as possible at the end of their shifts and to remain away until the beginning of their shifts next following (Pet. Ex. 1, pp. 6-7, 18; R. 39). The amount of non-working time in the plant available to the employees was plainly very limited; and this fact underlines the strong probability that discord caused by solicitation during the abbreviated lunch period or just before the beginning of a shift would be "almost certain to invade working hours" (as Wilson, petitioner's Director of Industrial Relations, testified, R. 47). Furthermore, the expeditious and orderly handling of the entrance and exit of large groups of workers before and after shifts and during the lunch recess was of obvious importance to efficient plant operation, and disturbances in the limited periods of time available for these purposes would necessarily have a direct impact upon production efficiency.
10. The Board adopted "the findings, conclusions, and recommendations" of the examiner, with certain exceptions not related to this statement (R. 674).

reading of the full context¹¹ reveals that Bobrow was paraphrasing the reasoning of the "National Labor Board" (presumably the National War Labor Board) in a case involving an entirely different company (R. 194-195). Moreover, it is clear that Bobrow was testifying on direct examination in response to a question *as to what was said* at his meeting with Kress on January 26, 1944 (R. 189-198). The purpose of the testimony was not to prove facts about petitioner's plant or its employees, but merely to establish the substance of the conversation at the meeting; and petitioner did not cross-examine the witness regarding this statement. In unvarnished language, the "finding" of the examiner just above quoted was made without the slightest justification in the evidence. The examiner's subsequent conclusion that petitioner's plant was the place "uniquely appropriate and almost solely available" to the employees for self-organization purposes (R. 638), falls of its own weight.

11. Bobrow's complete testimony on this point is as follows:

I also pointed out that only a few short weeks prior to the time this conversation was being held a worker in Sperry Gyroscope Company had been fired for an almost identical reason, that of soliciting on company property, also on his own time, though.

I pointed out to Mr. Kress and Mr. Lasker and Mr. Wilson that this worker was reinstated within a couple of weeks through a decision by the National Labor Board with full back pay and the decision found that he was within his rights first of all soliciting on his own time, but in addition to that that in these plants where transportation is particularly limited through gas rationing and transportation is made very difficult and workers come from a radius of anywhere from 10 to 50 miles to work every single day, it is reasonable to expect that the shop would be the natural place for workers to talk to one another and encourage one another to join the union.

I pointed out to Mr. Kress that to the best of my knowledge this decision of the Labor Board was properly predicated on that principle (R. 194-195).

The Board offered no testimony in this case as to where or how far from the plant the employees lived, what means of transportation were available to them, what their social habits were, or what opportunities for association were afforded them outside the plant.¹² There is, in short, nothing on which the Board could base a finding as to the importance to the employees of the privilege of soliciting within the plant, and *a fortiori* there is no basis for the Board's award of priority between the conflicting interests.

The court below recognized that the Board here "did not take evidence upon the issue" of the competing priorities (R. 712-713); and with respect to three earlier Board decisions enunciating its doctrine,¹³ the court said:

We have examined these, but we cannot find in them any statement of the effects upon the employees of denying them the privilege of such [union] discussion, or upon the employer of granting it; *only a general conclusion that it is reasonable to allow the discussion to go on.* (R. 713). (Emphasis supplied).

The lower court erred, however, in holding (1) that the Board could substitute for evidence and findings its "general familiarity with the conditions of industry"; and (2) that, since the record did not enable the court "to distinguish that part of the determination which lies within our powers of review—the appraisal of the conflicting interests and the award of priority between them—from that part which

12. Although a number of petitioner's officials were called as witnesses either by the Board or by petitioner (these officials included Wilson, Director of Industrial Relations (R. 15); Lasker, Factory Manager (R. 374); MacDonald, Assistant Factory Manager (R. 412) and Kress, Assistant to the President (R. 540)); the Board made no attempt to elicit testimony from them concerning these matters.

13. *Matter of Denver Tent & Awning Co.*, 47 N. L. R. B. 586;
Matter of U. S. Cartridge Co., 47 N. L. R. B. 896;
Matter of Carter Carburetor Corp., 48 N. L. R. B. 354.
 See discussion *supra*, pp. 12-13.

is wholly the Board's—the ascertainment of the facts" (R. 713), the court was foreclosed from considering the question of law.

The effect of the court's decision is plainly to abdicate its traditional right of review, and to confer upon the Board power finally to determine questions of law by its *ipse dixit*, without a shred of evidentiary support. This is squarely contrary to the settled principles of judicial review of the action of administrative bodies such as the Board. Section 10(e) and (f) of the Act; *National Labor Relations Board v. Waterman Steamship Corp.*, 309 U. S. 206, 208 (1940); *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 597 (1941). If the courts uncritically accept the Board's general conclusions because they cannot tell how the Board reaches its result, the right of an aggrieved party to judicial review becomes wholly illusory.

This Court has lately demonstrated that it will not accept from an administrative body such a general conclusion which cannot be tested in the light of the record. In *Eastern-Central Motor Carriers Ass'n. v. United States*, 321 U. S. 194 (1944), the Interstate Commerce Commission had held a proposed "volume minimum" rate for motor carriers to be unreasonable and discriminatory, as a matter of policy which condemned all such rates in the absence of clear affirmative showing that they would operate at costs less than those incurred at reasonable "loading capacity" rates. The District Court affirmed the Commission's decision, holding that the extent to which the factor of competition should be recognized in arriving at just rates was a matter for the Commission's expert judgment. This Court reversed the Commission, saying that it could not tell from the record what effect the proposed rates would have upon competitive conditions,

... other than by sheer acceptance of the Commission's conclusion, in the form of its statement of the result and cryptic formulation of the policy on which it rested . . . (p. 209)

In conclusion, this Court said (pp. 211-212):

In returning the case we emphasize that we do not question the Commission's authority to adopt and apply general policies appropriate to particular classes of cases, *so long as they are consistent with the statutory standards which govern its action and are formulated not only after due consideration of the factors involved but with sufficient explication to enable the parties and ourselves to understand, with a fair degree of assurance, why the Commission acts as it does.* Cf. *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 488, 489. . . . We only require that, whatever result be reached, enough be put of record to enable us to perform the limited task which is ours. [Emphasis supplied]

The analogy to the case at bar is very close. Here the Board, without "sufficient explication" to enable this Court and petitioner to understand why the Board "acts as it does", demands "sheer acceptance" of its conclusion (that prohibition of non-working time solicitation is an unreasonable impediment to self-organization), "in the form of its statement of the result and cryptic formulation of the policy on which it rested."

The court below suggests that, in dealing with this issue, the Board may draw upon its "general familiarity with the conditions of industry" (R. 713). No doubt the Board may in effect take judicial notice of matters "within its own peculiar province of inquiry"; but such facts must be noted in the record, since otherwise, no opportunity is afforded the opposite party to meet and rebut such evidence, and furthermore, to the argument that the finding of the Board was based on insufficient evidence it could always be answered that facts judicially noticed formed a sufficient basis for the finding. As said by this Court in *Interstate Commerce Commission v. Louisville & Nashville Railroad Co.*, 227 U. S. 88 (1912), at pp. 93-94:

The Commission is an administrative body and, even where it acts in a quasi-judicial capacity,

is not limited by the strict rules,¹⁴ as to the admissibility of evidence, which prevail in suits between private parties. *Interstate Commerce Commission v. Baird*, 194 U. S. 25. But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown, but presumptively sufficient information to support the finding. *United States v. Baltimore & Ohio S. W. R. R.*, 226 U. S. 14.

See, to the same effect, *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, 301 U. S. 292, 304-305 (1937); *West Ohio Gas Co. v. Public Utilities Commission of Ohio*, 294 U. S. 63, 67-68 (1935); *United States and Interstate Commerce Commission v. Abilene & Southern Railway Co.*, 265 U. S. 274, 288 (1924); Faris, *Judicial Notice by Administrative Bodies*, 4 Indiana L. J. 167, 177-178; Note, *Judicial Notice by Administrative Tribunals*, 44 Yale L. J. 355, 356.¹⁴ The lower court is entirely in error in indulging

14. A significant excerpt from this Note (44 Yale L. J. 355, 356) is as follows:

On the other hand, although they would not tamper with the nature of the proceedings before administrative tribunals, the courts must insist upon maintaining some measure of control over results. They must be able to step in for the avowed purpose of striking a proper balance between the conflicting desiderata of governmental efficiency and pro-

(Footnote continued on next page)

the presumption that, although the Board's conclusion has no record support, it must nevertheless be well-founded on general information revealed neither to the court nor to petitioner.

B

Petitioner's solicitation rule is valid as a matter of law.

As already noted (*supra*, pp. 11-12), the propriety of a rule such as petitioner's here should be determined by a careful appraisal and balancing of the various interests involved. The rule protects the public interest, and the employer's legitimate private interest, in the efficient and economic operation of the plant and the welfare and safety of the employees; it also impinges to some extent on employee self-organization, in which the public is likewise interested.

The general importance to self-organization of the privilege of solicitation inside the employer's plant may be tested in a number of ways. In the first place, if labor organizations themselves esteemed the privilege and believed its denial to be a serious impediment to their growth, it is natural to suppose that the issue would frequently

tection of individual rights. The exercise of this appellate jurisdiction entails the necessity of a record which, if it is to enable the court to pass intelligently upon the administrative proceedings, must contain all of the facts considered by the administrative tribunal. To meet this requirement, some sort of restriction must be placed upon the doctrine of "judicial notice" by administrative tribunals, such as incorporation by reference into the record of all facts noticed; otherwise, to the argument that the finding of the board was based on insufficient evidence it could always be answered that facts judicially noticed formed a sufficient basis for the finding. Since much of the matter noticed by administrative tribunals would be matters of expert knowledge with which the courts are unfamiliar, it would seem necessary also to include in the record citation of the source material essential to determine the facts noticed, if proper review is to be assured.

appear in the historical development of the labor movement. However, save only in exceptional situations where employees were almost continuously on "company property" (as where the body of employees lived in a company-owned town, or aboard merchant vessels)¹⁵ unions seem historically to have had little or no concern about the matter.¹⁶

Secondly, if the privilege is of consequence, it is unlikely that unions would deliberately contract it away. Yet many recent collective bargaining agreements—even some to

15. In such exceptional cases it may well be that denial of the right of self-organization upon "company property" would seriously impair that right. See, e.g., *National Labor Relations Board v. Waterman Steamship Corp.*, 309 U. S. 206 (1940), enf'g *Matter of Waterman Steamship Corp.*, 7 N. L. R. B. 237 (1938); *National Labor Relations Board v. West Kentucky Coal Co.*, 116 F. 2d 816 (C. C. A. 6, 1940), enf'g *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88 (1938); *Matter of Harlan Fuel Co.*, 8 N. L. R. B. 25 (1938).

National Labor Relations Board v. Cities Service Oil Co., 122 F. 2d 149 (C. C. A. 2, 1941), involved the right of union representatives to passes enabling them to board respondents' ships in order to investigate grievances of the seamen. The court upheld the Board's requirement that passes be granted for this purpose, but declined to direct the granting of passes for the purpose of union solicitation. In its opinion below the court holds the *Cities Service* case irrelevant here, because it involved union agents not in the employ of the respondent employers (R. 712). We submit that this is a highly doubtful distinction; if the protection of the self-organizing right required ship-board solicitation, it might best have been effectuated through the leadership of trained outside organizers.

16. See generally, J. R. Commons and others, *History of Labor in the United States*, 4 Vols. (New York, 1918-1935), particularly Vols. II and IV. In Daugherty and others, *Economics of the Iron and Steel Industry* (New York 1937), Vol. II, pp. 991-994, a discussion of repressive measures used to resist unionization in the iron and steel industry makes no reference to the denial of the privilege of intra-plant solicitation.

which the U. A. W. has been a party—contain provisions barring all intra-plant solicitation.¹⁷

Thirdly, a study of the legislative history of the Act, including the various reports of the Congressional committees¹⁸ and the Congressional debates,¹⁹ discloses no evidence that Congress considered a denial of the privilege of intra-plant solicitation to be one of the numerous interferences with self-organization and collective bargaining against which the Act is directed, or indeed that Congress was in any way concerned with the allowing or denying of the privilege.

Finally, there has been no uniformity in dealing with the question either on the part of the National Labor Relations Board or of the National War Labor Board. The Labor Relations Board has upheld the validity of prohibitions against inside, non-working time solicitation in several cases;²⁰ and the War Labor Board has both approved²¹

17. See Appendix B to this brief, containing examples of provisions forbidding intra-plant solicitation taken from collective agreements between employers and unions (including the U. A. W.); also *Collective Bargaining Contracts* (pub. by the Bureau of National Affairs, Inc., Washington, 1941), pp. 541, 220; Elias Lieberman, *The Collective Labor Agreement* (New York, 1939), p. 294; H. S. Roberts, *The Rubber Workers* (New York, 1944), p. 312; U. S. Dept. of Labor, Bureau of Labor Statistics, Bull. No. 716, pp. 5-6.
18. Senate Rep. No. 513, House Reps. Nos. 969, 972 and 1147, 74th Cong., 1st Session.
19. See, *passim*, Congressional Record, Vol. 79, Parts 3 and 6 (74th Cong., 1st Sess.).
20. *Matter of Nash-Kelvinator Corp.*, 18 N. L. R. B. 738, 743 (1939); *Matter of Bemis Bros. Bag Co.*, 28 N. L. R. B. 430, 440 (1940); *Matter of Marshall Field & Co.*, 34 N. L. R. B. 1, 11 (1941); but see cases discussed *supra*, pp. 12-13.
21. *Matter of J. I. Case Co.*, 10 L. R. R. Man. 1057, 1059 (1942).

and disapproved²² trade agreements containing such prohibitions. Its disapproval occurred, it should be noted, in cases where the employees were already "organized", and the employer was engaged in collective bargaining with the union representing them. In this situation, of course, union solicitation is much less likely to create friction and disharmony than when the employees are unorganized, and these cases are clearly distinguishable from the case at bar.²³

We submit that a consideration of these various factors impels the conclusion that the privilege of intra-plant solicitation, while no doubt of assistance in self-organization, is not, in the usual case, of particular significance in the protection of the employees' rights.

On the other hand, the permission of solicitation within the plant is obviously fraught with potential if not actual danger to employee harmony and safety and to efficient production. This is well stated in *Midland Steel Products Co. v. National Labor Relations Board*, 113 F. 2d 800 (C. C. A. 6, 1940), at 805-806:

In modern industry the performance of work with efficiency and without physical danger depends not only upon the devotion of the employees to their

22. *Matter of General Chemical Co.*, 3 War. Lab. Rep. 387, 396 (1942); *Matter of Ohio Public Service Co.*, 7 War. Lab. Rep. 154, 156 (1943).

23. The War Labor Board has very recently found it necessary to limit non-working time solicitation even in an organized enterprise. In *Matter of American Telephone and Telegraph Co.*, 20 War Labor Rep. 201, 202 (November 28, 1944) the Board directed employer and union to agree that union solicitation outside of working time should be carried on only "in space where no company operations or administrative work is performed" and by groups of no more than eight employees, with the further proviso that solicitation "shall not interfere with the operations of the company or the use of the space by other employees for the purposes for which the space is intended".

work, but also upon the amity with which they cooperate.

Solicitation, argument, the hurling of epithets in tense discussion before work has been commenced or in the noon hour, may reasonably be expected to carry a certain animus over into work hours.

Similarly, in *Le Tourneau Co. of Georgia v. National Labor Relations Board*, 143 F. 2d 67 (C. C. A. 5, 1944), cert. granted November 6, 1944, the court said (p. 68):

Unfortunately organization efforts often produce excitement and feeling among the employees, even exhibitions of violence.

The effects of such disharmony and friction among the employees constitute, of course, an immediate danger not only to the employer's legitimate interest in efficient operation but also to the important public interest in uninterrupted production and the safety and welfare of the employees.

These disruptive and harmful results are much more likely to occur in an unorganized plant than in a plant where a union has established its right to majority representation of the employees. This is inevitable in the democratic process: during many of our political election campaigns, charges are hurled, epithets applied, and feeling runs high; neighbors, usually amicable, engage in angry and violent argument. When the election is past, the losers for the great part accept the decision of the majority, and the electorate settles down to normal existence. So it is in union organizational campaigns. The National War Labor Board has recognized this, saying in *Matter of Ohio Public Service Co.*, 7 War Labor Rep. 154 (1943) at 156:

In the past, because of the question as to which of two organizations would represent the employees and whether or not some employees desired to have no labor organization, it is not surprising if there

was friction between certain employees. At the present time, however, the union has been recognized as the sole agency for collective bargaining for the employees here involved. There is no reason to anticipate continuance of such animosities as have existed in the past.

The question whether union solicitation should be permitted in an organized plant is not presented in this case, since no majority representative had been chosen (R. 555).

When all these various considerations are duly weighed, we submit that the proper balancing of interests clearly justifies the barring of solicitation in a plant where no bargaining agent has been chosen,²⁴ unless in a particular case it can be shown that solicitation outside the plant is so difficult as seriously to impair the self-organizational right. Since no such showing is made in the instant case, petitioner's rule should be held valid as a matter of law.²⁵

Thus far the question of the validity of rules similar to petitioner's has been considered in seven other cases by four different Circuit Courts of Appeals. In each case, the court has unanimously held or stated that such rules, if not adopted or applied with anti-union motive, are valid as a matter of law.

Square holdings to this effect are found in *Midland Steel Products Co. v. National Labor Relations Board*, 113 F. 2d 807, 805-806 (C. C. A. 6, 1940);²⁶ *Boeing Airplane Co.*

24. Cf. S. M. Salny, *Independent Unions under the Wagner Act* (Boston, 1944), pp. 247-249, 280.

25. This is the view expressed by Judge Swan in his dissenting opinion below (R. 715).

26. The reasons for its decision in the *Midland Steel* case are well expounded by the court at pp. 805-806.

We think the rule is clearly reasonable. The employer has the right on his premises to demand the single-minded attention of the employee to his work. In modern industry

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v. *National Labor Relations Board*, 140 F. 2d 423, 435 (C. C. A. 10, 1944); and *LeTourneau Co. of Georgia v. National Labor Relations Board*, 143 F. 2d 67, 68 (C. C. A. 5, 1944), cert. granted November 6, 1944.²⁷ In *National Labor Relations Board v. Williamson-Dickie Mfg. Co.*, 139 F. 2d 260, 267-268 (C. C. A. 5, 1942) the validity of a similar rule was upheld by necessary implication, as the court below noted (R. 711). In each of three other cases—*National Labor Relations Board v. Denver Tent & Awning Co.*, 138 F. 2d 410, 411 (C. C. A. 10, 1943); *Carter Carburetor Corp. v. National Labor Relations Board*, 140 F. 2d 714, 716 (C. C. A. 8, 1944); and *National Labor Relations Board v. Peyton Packing Co.*, 142 F. 2d 1009 (C. C. A. 5, 1944), cert. den. October 9, 1944—the court sustained the Board's finding that the rule involved was adopted or applied for anti-union reasons; but in each case the court subscribed to the general proposition that such rules, in the absence of anti-union motive, are lawful.

Since petitioner's solicitation rule was reasonable and lawful and was adopted and applied without anti-union

the performance of work with efficiency and without physical danger depends not only upon the devotion of the employees to their work, but also upon the amity with which they cooperate.

The right of the employer to make reasonable rules for the safety and efficiency of the work includes his right to make such rules for the entire time that the working force is on the employer's premises. Solicitation, argument, the hurling of epithets in tense discussion before work has been commenced or in the noon hour, may reasonably be expected to carry a certain animus over into work hours. If the rule against solicitation is reasonable, the fact that it applied to soliciting for union membership does not relieve the employee of his obligation of obedience.

27. This case has been set for argument before this Court immediately after the instant case.

animus, the discharge of Stone for breach of the rule was not violative of Section 8(1) or 8(3) of the Act.

However, irrespective of the validity of the rule, its application to Stone was not a violation of Section 8(3) of the Act. This section makes it an unfair labor practice for an employer—

by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization

The term "discrimination" in this context plainly means the making of a difference in treatment of one or more individuals as compared with others. See *Webster's New International Dictionary* (1929), p. 637. The "term or condition of employment" here involved is the rule against solicitation. The proof is clear that petitioner impartially enforced the rule both with respect to Stone and to all other employees (*supra*, pp. 34), and the Board reversed the examiner's finding that the rule had been discriminatorily applied to Stone (R. 690). The rule was invoked against union solicitation precisely as it was invoked against all other forms of solicitation. Hence the discharge of Stone did not constitute discrimination within the meaning of Section 8(3). Moreover, while the discharge obviously affected Stone's "tenure of employment", it did not do so in any discriminatory manner: the discharge resulted from the impartial enforcement of the rule, and was not in any way motivated by anti-union cause. The Board itself has said:

The Board has never held it to be an unfair labor practice [under Section 8(3) of the Act] for an employer to hire or discharge, to promote, or demote, to transfer, lay-off or reinstat., or otherwise to affect the hire or tenure of employees or their terms or conditions of employment, for assorted reasons of business, animosity, or because of sheer caprice, so

long as the employer's conduct is not wholly or in part motivated by antiunion cause.²⁸

It is apparent that so much of the Board's order as requires petitioner to reinstate Stone with back pay (order, 2(a) and (b), R. 693) is premised upon the Board's finding of a violation of Section 8(3). Since no such violation can be established on this branch of the case irrespective of the determination as to the general validity of the solicitation rule, this part of the Board's order can not be sustained.

II

Since the U. A. W. had not been recognized, petitioner's prohibition against the wearing in its plant of U. A. W. steward buttons was reasonable and lawful.

The narrow issue presented is the propriety of petitioner's prohibition of the wearing of one particular type of U. A. W. insignia, the steward button or badge. The evidence is undisputed that petitioner had no objection to, and did not seek to regulate, the wearing of any other form of union button or badge (*supra*, pp. 5-6).

There is no controversy as to the facts already outlined (*supra*, pp. 5-6) relating to this issue. The U. A. W. had neither qualified nor asked for recognition as employee bargaining agent,²⁹ nor had it chartered a local at the plant.

28. *Fourth Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1940), p. 60; see to the same effect the Board's *Fifth Annual Report* (1941), p. 37, *Sixth Annual Report* (1942), p. 45, and *Seventh Annual Report* (1943), p. 46.

29. Through its regional director, the U. A. W. had requested minority representation for its members concerning grievances and working conditions (R. 609-610). To this the U. A. W. was not entitled, as the Board and the courts have held *Matter of Bailey Miter Co.*, 53 N. L. R. B. 706 (1943), 707, cf. 712; *Mooreville Cotton Mills v. National Labor Relations Board*, 94 F. 2d 61, 65 (C. C. A. 4, 1938).

The employees who wore the badge of steward received their title in most casual fashion, at the hands of a very small fraction of the entire body of workers; their function was to electioneer for the U. A. W., which did not differ materially from their previous function as members of the organizing committee. Petitioner, after due deliberation and advice from counsel, concluded that, by wearing the buttons, these employees appeared to be representing themselves not merely as U. A. W. functionaries, but as having management-recognized status in the plant;³⁰ and acquiescence in this representation, petitioner was convinced, constituted a probable violation of the neutrality required by the Act, and furthermore threatened to impair petitioner's established grievance procedure. In requesting the "stewards" to cease wearing their buttons, petitioner gave a full explanation of the reasons for its position; however, the employees deliberately refused obedience, doubtless to make a test case.

Petitioner's apprehension that under the circumstances the wearing of these buttons was a misrepresentation it could not properly ignore, was well-founded. The term "steward" or "shop steward" has acquired an established and definite meaning in the labor relations field. The steward is recognized as the representative of a labor organization and its employee members in their relations with the employer; he sees to the carrying out of provisions of collective bargaining agreements, and his typical and emphasized function is the adjustment with management of

³⁰ Special significance attached to the display of buttons or badges in petitioner's organization. Every employee was required, while in the plant, to wear a badge which (a) in the case of the ordinary employee, by its particular color identified the shop in which he worked, and (b) in the case of the supervisory employee, by its distinctive design denoted his degree of rank and authority in petitioner's hierarchy (R. 22-23, 36, 503).

employee grievances.³¹ The steward also has intra-union tasks, such as the soliciting of new members and the collection of dues; but his characteristic duty, which distinguishes him from union workers and organizers in general, is that of dealing with management on behalf of the employees he represents. This characteristic function can, of course, attach to his office only when it has been accorded some form of management recognition.

The employees here involved were obviously not stewards in this sense. Irrespective of the right of the U. A. W., for its internal purposes, to give them any title it chose, in the plant and *vis-à-vis* management they were simply U. A. W. organizers.

Had petitioner condoned the misrepresentation by these employees of their status, with its obvious implication of some degree of acceptance of the U. A. W., rival labor organizations might well have complained.³² The principle

31. See e.g., U. S. Dept. of Labor, Bur. of Labor Statistics, Bull. No. 686, p. 144; also Bulls. Nos. 419, 448, 468, 716 (pp. 5-6); *Collective Bargaining Developments and Representative Union Agreements, Studies In Personnel Policy*, No. 60, pub. by National Industrial Conference Board (1944); Lieberman, *The Collective Labor Agreement* (New York, 1939), pp. 183 ff.; Salay, *Independent Unions under the Wagner Act* (Boston, 1944), p. 292; *Matter of Arthur J. O'Leary and Son Co.*, 9 War Labor Rep. 421, 428 (1943); 8 L. R. R. Man. 1222, 1226 (1941) (agreement of June 15, 1939, between Allis-Chalmers Manufacturing Co. and the U. A. W.).

See also Appendix C to this brief, setting forth pertinent extracts from Government, union and other publications, relating to the functions of shop stewards.

32. The Board lays mistaken stress upon the absence of evidence that any employee had, in fact, been misled by the steward buttons. It has been uniformly held, in cases involving illegal assistance by employers to unions, that proof of the effect of the assistance upon individual employees is unnecessary; it is the evidencing ~~of~~ favor, whether directly or indirectly,

is well settled that an employer must treat with complete impartiality and neutrality the efforts of his employees to organize for collective bargaining purposes. *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72, 78 (1940); *National Labor Relations Board v. Cleveland-Cliffs Iron Co.*, 133 F. 2d 295, 301 (C. C. A. 6, 1943). The fact that no rivals had as yet openly appeared is irrelevant; petitioner was entitled to guard in advance against being caught in the union cross-fire.³³

Furthermore, the record shows that for many months prior to January 1943, petitioner had had in operation effective procedure for the adjustment of employee problems and grievances (R. 33-35, 555, 564, 576-578). The appearance of employees purporting to hold the office of steward—an office normally connoting active participation in grievance adjustment—was obviously calculated to raise, in the minds of supervisors and subordinate employees, question whether petitioner's established grievance pro-

which offends the Act. *National Labor Relations Board v. John Englehorn & Sons*, 134 F. 2d 553, 556 (C. C. A. 3, 1943); *National Labor Relations Board v. Aintree Corp.*, 132 F. 2d 469, 472 (C. C. A. 7, 1942); *Rapid Roller Co. v. National Labor Relations Board*, 126 F. 2d 452, 457 (C. C. A. 7, 1942); *Humble Oil & Refining Co. v. National Labor Relations Board*, 113 F. 2d 85, 93 (C. C. A. 5, 1940).

³³ Subsequent to the hearing in this case, two other unions did seek representation of certain employees respectively at petitioner's Long Island plant and at its plant in Evansville, Indiana. In an election directed by the Board at the Long Island plant, Local Union No. 25, International Brotherhood of Electrical Workers, A. F. L. was placed on the ballot together with the U. A. W. *Matter of Republic Aviation Corporation, etc.*, 54 N. L. R. B. 539 (1944). In the election directed at the Indiana plant, International Association of Machinists and the U. A. W. were both placed on the ballot. *Matter of Republic Aviation Corporation, Indiana Division, etc.*, 51 N. L. R. B. 1287 (1943).

cedure was being supplanted or supplemented. The Board's comment that there is no specific evidence that "the appearance of union stewards affected the normal operation" of the grievance procedure, is in the face of Kress' undisputed testimony that "the wearing of shop steward buttons was confusing to our supervisory staff" (R. 554-555), and is in any case beside the mark. Petitioner was entitled to stop the misrepresentation before harm was done.

Basically, this issue required the Board to balance petitioner's interest in the orderly operation of its plant against the employees' interest in self-organization. We submit that on this record the balance is wholly in favor of petitioner: there is abundant evidence of potential harm to petitioner if the button wearing were permitted, and there is no proof at all that the prohibition was detrimental to the employees. The record leaves no doubt that the employees were free to wear any other type of U. A. W. button (R. 213, 241, 561-563), and there is no showing that the self-organization of the employees would have been legitimately aided by the wearing of the steward insignia. The Board, however, advances no real argument against petitioner's position, contenting itself with the observation that no harm had yet occurred, and holding merely that the prohibition was a "curtailment" of the employees' right "to wear union insignia at work" (R. 675-676). It is apparent that on this issue the Board has not intelligently appraised and balanced the conflicting interests, but—as in the case of the solicitation rule—has indulged, in "the cryptic formulation of its policy" (cf. *supra*, p. 18).

In the light of all the circumstances, petitioner's ban against the wearing of the steward buttons was wholly reasonable, and hence the discharge of the three employees for disobeying the ban—being otherwise not discriminatory—was not violative of Section 8(1) and (3) of the Act. The

lower court erred in failing to review the Board's determination of the issue, and in failing to hold the prohibition to be reasonable as a matter of law.

Conclusion

For the foregoing reasons, it is respectfully submitted that the decree below should be reversed.

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December 1944.



Appendix A

Statute Involved

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U.S.C. 151 *et seq.*) are as follows:

SECTION 1.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Sec. 7. Employees shall have the right to self-organization; to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

Sec. 10 (e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for

the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the district court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. . . . The findings of the Board as to the facts, if supported by evidence, shall be conclusive. . . . The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended.

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. . . . Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

Appendix B

Examples of Provisions Forbidding Intra-Plant Solicitation, taken from Collective Agreements between Employers and Unions (including the U. A. W.).

1. From agreement between Briggs Manufacturing Company, a Michigan Corporation, and Briggs Indiana Corporation, an Indiana Corporation, and International Union, United Automobile Workers of America, Locals Nos. 212 and 265 (CIO) June 7, 1939, 4 L. R. R. Man. 1022.

Article 1—*Recognition.*

Section 1. * * *

(b) The Union agrees that its representatives and members will not, on Company time or property, solicit membership in the Union and that its representatives and members will not intimidate or coerce employees in any manner or at any time.

2. From agreement between Allis-Chalmers Manufacturing Co. and Allis-Chalmers Workers' Union, Local 248, United Automobile Workers of America (CIO), June 15, 1939, 8 L. R. R. Man. 1222, 1223.

Sec. 4. The Union agrees that neither the Union nor its members will intimidate or coerce employees, or solicit membership on Company premises, or conduct on Company premises any union activity other than that of collective bargaining and handling of grievances in the manner and to the extent herein-after provided; provided, however, that the Company will, as mutually agreed upon from time to time, permit the Union to conduct upon Company premises activities other than those above designated, with the understanding that such activities will not cause any interference with the proper and orderly operation of the plant.

3. From agreement between Jones & Laughlin Steel Corp. (Pittsburgh and Aliquippa works and Pittsburgh

Warehouse) and Steel Workers Organizing Committee (CIO), April 1, 1941, U. S. Dept. of Labor, Bur. of Labor Statistics, Bull. No. 686, p. 294.

Section 2. *Recognition*—The corporation recognizes the union as the exclusive collective-bargaining agency for all of its employees. The corporation recognizes and will not interfere with the right of its employees to become members of the union. There shall be no discrimination, interference, restraint, or coercion by the corporation or any of its agents against any members because of membership in the union. The union, its members, and agents agree not to intimidate or coerce employees into membership and also not to solicit membership on corporation time or plant property.

4. From agreement between Monroe Calculating Machine Co. and United Electrical, Radio and Machine Workers of America (CIO), July 14, 1942: printed in Company handbook.

Article XI—*Bulletin Boards*

Section 3. There shall be no distribution of letters, pamphlets, advertising matter, or tickets of any kind permitted on the Company's property, except by special permission of the Company in each individual case.

5. From agreement between American Viscose Corporation, Wilmington, Delaware, and Textile Workers Union of America (CIO), November 13, 1942: printed in Company handbook.

Article I.

Section J. The Union agrees that neither its members nor representatives of the Union will intimidate or coerce employees into joining the Union, and also agrees that its members will not solicit membership in the Union either on the Corporation's time or at their place of work.

6. From agreement between Timken Roller Bearing Co., Canton, Ohio, and United Steel Workers of America (CIO), February 19, 1943; printed in Company handbook.

Section II—*Recognition*

The Company recognizes the Union as the exclusive representative of the employees of the Company of this agreement for the purposes of collective bargaining, within the meaning and subject to the terms and provisions of the National Labor Relations Act. The Company recognizes and will not interfere with the right of its employees to become members of the Union. There shall be no discrimination, interference, restraint or coercion by the Company or any of its agents against any employees because of membership in the Union. The Union agrees not to intimidate or coerce employees into membership and not to solicit membership or collect dues on Company time or plant property.

7. From agreement between Kendall Mills, Oakland Plant, Newberry, S. C., and United Textile Workers of America, May 17, 1943; printed in Company handbook.

Section Eight—*Union Affairs*

The employer agrees that employees shall be wholly free to join the Union and participate in its affairs. The Union likewise agrees not to solicit membership within the mill and not to conduct Union affairs on Employer time, except as expressly provided for herein.

Union representatives may confer with the management and may handle departmental grievances on Employer time. In such cases both the aggrieved employees and the Union representatives shall obtain permission from their overseers to leave their work.

8. From agreement between The Texas Company, Port Arthur Works and Port Arthur Terminal Laboratories and United Laboratory Workers, July 11, 1944; printed in Company handbook.

Article XIII—Miscellaneous

Paragraph H. Solicitation for membership or collection of dues shall not be done on Company property or during working hours, nor will there be permitted on Company property or during working hours any activity which is an unfair labor practise within the meaning of the National Labor Relations Act.

Appendix C

Extracts from Government, Union and other Publications, Relating to the Functions of Shop Stewards.

1. From *Preparing a Steward's Manual*—Bull. No. 59,
U. S. Dept. of Labor, Div. of Labor Standards, 1943.

pp. 4-6 THE STEWARD'S JOB

The steward is the cornerstone of the union.

As representative of the union in your plant, you, the steward, are the key man in the relationship of the union to management and the union to its members. Upon you depends, in large part, the success or failure of collective bargaining and the union organization in your plant.

Without you, and others like you, even the best contract is meaningless. You give it life; you make it work. The wisest union leader, the most efficient business agent cannot build the union, and make it function effectively without your help.

The union depends on you and your fellow stewards for future leadership. The men and women who will represent labor in industry-wide conferences and at national policy-making conventions will come from the ranks of those who are today adjusting plant grievances and collecting union dues.

Management also depends on you for good industrial relations. Spokesmen for management have

said many times that a union steward who performs successfully the responsibilities with which he is entrusted is an asset to the company as well as to the men he represents.

You have, in general, two kinds of responsibilities. As spokesman for a group of workers you have the duty of enforcing the provisions of the contract as it affects them, of taking up their individual grievances with management and of carrying out the general policies of the union in all dealings with the company.

The other half of your job is to give leadership to the workers in making your organization as effective, democratic, and constructive as possible. You are the indispensable link between the members and the union office. You keep the union office informed of shop problems and the grievances of members. You keep the members informed of union activities and organization policies.

Representing the Workers to Management.

In representing the workers to management your main responsibility is to see that the provisions of the contract are observed. You can do this in a general way by comparing wages, hours, and other working conditions of the employees you represent with the conditions laid down in the contract. If something looks wrong to you, you will want to talk it over with the foreman and try to straighten out the situation immediately.

You probably won't have much trouble finding out about violations of the contract since the worker or workers affected will usually bring their grievances to you at the first opportunity. If you feel the complaint is justified it is your responsibility to take it up with the foreman. This is your first step in the grievance procedure. You will, of course, take pride in settling as many grievances as possible at this stage.

p. 8. Your Relationship with Supervision.

The importance of good relationship between the steward and the foreman cannot be overemphasized. *The foreman is the key man in the company's collective bargaining set-up just as you, the steward, are the key man in the union set-up. Between the two of you, you can largely determine the nature of labor relations in your department. It is you two—the steward and foreman—working together, who can make the union contract into a healthy cooperative undertaking which promotes morale and efficiency or let it become a bone of contention which helps no one.* (Emphasis supplied.)

2. From *How to Win for the Union—A handbook for UAW-CIO Stewards and Committeemen*, pub. by International Education Dept., UAW-CIO, 6th Ed., February, 1943 (pp. 58-60).

CHECK LIST OF STEWARD'S DUTIES

ARE THESE JOBS BEING DONE IN YOUR PLANT?

He handles all grievances and strives to settle them in a peaceful manner to the satisfaction of the aggrieved worker.

He knows his department from top to bottom and checks abuses before they become chronic.

He knows his rights under the contract and the National Labor Relations Act.

He knows the contract well enough to catch infractions the minute they occur.

He keeps a written record of all grievances and their disposition.

He checks production rates to be sure they are the most productive ones over a long period, guarding against those that give flashes of high output but only lead to fatigue and inaccurate work in the long run.

He works for the elimination of all health and safety hazards in his department.

He announces all union meetings.

He keeps every worker in the department paid up and in good standing with the union.

He checks rumors and dissension by passing out reliable information on union activities and policies.

He is patient with sincere men who do not yet understand unionism.

He is wise enough to call upon the officers and executive board of his local for advice and assistance when major problems spring up in his department.

He knows where to secure reliable information on unemployment compensation, workmen's compensation, the National Labor Relations Act, and other legal questions.

He knows the operations, procedures and policies of the War Labor Board backward and forward.

He knows what conciliation services the government offers, and how to use them to best advantage.

He knows as much as or more than the foreman about production methods.

He regards maximum war production in his shop as his primary concern, and works at all times to develop better productive methods in cooperation with his Labor-Management Production Drive Committee.

He works like a dog, but he and his kind are the salt of labor's earth.

3. From *So You're A Steward!, a Handbook for TWU Shop Stewards and Department Committees*, pub. by Education Dept., Textile Workers Union of America C.I.O., New York City (1943). (pp. 5-9).

As a shop steward, yours is the job and the opportunity to make this industrial democracy function. You represent your fellow workers in the shop. You are the non commissioned officers in the union army. As you carry out your duties effectively, you will represent your fellow unionists well, and the union will have value and meaning for them, and will flourish.

➤ You are the representative of the union in the shop. It is within your power to turn a contract from a document of words and clauses into a living protection for the rights of workers. Without you, and others like you, even the best contract is meaningless. You put life in its veins, you make it work.

Because you are in the shop, in immediate contact with both worker and management, you become the basic foundation of the union. The wisest union leader, the most efficient business agent cannot build the union, and make it function effectively without your help. You must deal with management on all questions relating to conditions of work, while at the same time you keep the union strong within the shop so that the boss knows that you do represent the workers.

KNOW YOUR CONTRACT

Let's look first at the steward's main tasks, his dealings with management. How can he best perform the job of seeing to it that the contract is lived up to in his department, that workers who have grievances can get them settled satisfactorily, and as rapidly as possible?

Obviously a shop steward who isn't completely familiar with the contract covering his plant will not be able to tell whether or not the company is living up to it. Unless he knows the contract provisions he'll not be able to properly advise a worker how to settle a complaint, much less discuss the matter with his foreman. So we might say that the first rule for shop stewards is: Know your contract.

The steward should read it over himself, and discuss it at shop stewards meetings, so that he is familiar enough with it to know how it applies to conditions which arise within the shop. A copy should always be kept close by for reference, for obviously, no one can be expected to memorize all of the clauses that go into a modern collective bargaining agreement.

KNOW YOUR DEPARTMENT

Then too, a steward who wants to be able to handle grievances intelligently must know his department. He must understand the operations as well, if not better than management. He should know which of the jobs are paid for by the hour and which by the piece. If an incentive bonus system is in effect, the

steward should know how it applies in his department. He should know something of expected and actual productions on the various jobs, and how the earnings run, in dollars and cents.

From his contacts in the department *the steward will also pick up much other information which will aid him in settling grievances.* He will know which workers are high producers, and which low, which machines are always getting out of order, while others run well.

IN CONCLUSION (p. 42)

So we've gone through the list of your duties as a shop steward. We have seen that you:

1. *Handle all grievances which arise in your department.*
2. Maintain sanitary and safe working conditions.
3. Maintain 100 per cent union membership in your department.
4. Get your workers to come to meetings, and otherwise educate them in union problems.
5. Serve as an invaluable link between the union officers and the members in the plant.

(Italics supplied).

-
4. From *The Collective Labor Agreement*, Elias Lieberman (New York, 1939), p. 184.

The Shop Steward, Shop Secretary, and Shop Treasurer designated by the Union shall be recognized by the Company as representatives of its employees for the negotiation of all disputes and grievances arising during the life of this agreement, and they shall have the right to call in to negotiations officers of Local No. 13 or of the General Executive Board of the Union. (Hamilton Marine Contracting Co. and Industrial Union of Marine and Shipbuilding Workers of America)

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1944.

REPUBLIC AVIATION CORPORATION, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD.

On Writ of Certiorari to the United States Circuit Court of
Appeals for the Second Circuit.

**REPLY BRIEF FOR REPUBLIC AVIATION
CORPORATION**

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**The Board Attempted to Adduce No Evidence, and There
is No Evidence in the Record, to Support Its Conclusion
as to the Invalidity of Petitioner's Solicitation Rule.**

In our main brief (pp. 11-12) we demonstrated that the determination as to the validity of the solicitation rule requires a careful appraisal and balancing of the public interest in employee self-organization on the one hand and the public interest and the legitimate private interest of the employer in efficient production and employee safety on the other. The Board in effect concedes its duty to

undertake this appraisal and balancing of interests (Br. pp. 17-19). But the Board's strained attempt (Br. pp. 32-37) to show that it has performed its duty in this case signally fails, because (a) the record affords no basis for judging the importance to employee self-organization of solicitation within the plant and (b) the Board has chosen to ignore the abundant evidence of the competing public and private interest in the efficient operation of the plant.

Analysis of the testimony clearly reveals that the Board made no effort to adduce evidence bearing on the importance of intraplant solicitation. This, we submit, was probably because the Board hoped—as indicated^a by the allegations of the complaint (R. 6) and the nature of the testimony which it did offer—to prove that petitioner designed and enforced the solicitation rule with the deliberate purpose “to frustrate the self-organization of its employees”. Indeed, the trial examiner so found (R. 634-637), but the Board very properly reversed his finding as unsupported by the proof (R. 675). Hence the Board was forced to stand upon the bare question of the reasonableness of the rule; and it has obviously endeavored to comb the record for incidental bits of testimony which might make a showing on the question of the importance of solicitation inside the plant. This endeavor was foredoomed to failure, as an examination of the pertinent parts of the Board's brief (pp. 34, 32-33) will show.

In its Statement (Br. 3-4) the Board purports to set forth certain “facts; as found by the Board and as shown by the evidence . . .” Included among these so-called fact-findings are the following:

1. “the employees live at distances ranging from as much as 10 to 50 miles from the plant.” (Br. 3) The supporting citations to the record (other than to the trial examiner's report) are:

(a) R. 195, a part of the testimony of Bobrow. The complete disqualification of this testimony, which was a paraphrasing of the rationale of a so-called “Na-

tional Labor Board" in a case involving an entirely different company, and was offered solely to establish the substance of a conversation between Bobrow and Kress, is fully shown in our main brief (pp. 14-15);

(b) *R. 591, 593, and 605.* These are photostats of personnel records of employees Katz and Stone, prepared contemporaneously with the commencement of their employment, showing an address for Katz in the Bronx; and for Stone in Brooklyn, New York. They indicate that in January 1941, Katz gave his address as the Bronx, and that in July 1942, Stone gave his address as Brooklyn, New York. These dates are respectively two years and nine months prior to the hearing. There is no evidence that these addresses continued; in fact, Katz at the hearing gave his address as Hempstead, Long Island (approximately 11 miles from petitioner's plant, see fn. 1, p. 4).

2. "[The employees'] homes are scattered over a wide area" (Br. 3). The supporting citations to the record comprise, first, the addresses of 6 of petitioner's executives and supervisors (which are, of course, wholly irrelevant, since these individuals do not belong to the employee group referred to) and, secondly, the personnel records above referred to of Katz and Stone, and also of 3 other employees with addresses at various points in Long Island.

3. "Due to gas rationing the normal peace time use of the automobile is drastically reduced and transportation to the vicinity of the plant is difficult" (Br. 4). The supporting citations to the record include the following: *R. 26*, testimony of Industrial Relations Director Wilson that his department handles gasoline rationing and transportation arrangements for the employees; *R. 66*, testimony of Stone that he distributed leaflets to employees outside of the plant gates and at the train platform; *R. 105, 146*, complaints by employee Katz as to congestion on the train platform outside the plant (The testimony of Katz, analogous to that of Bobrow above, was offered merely to prove the substance of a conversation between Katz and em-

ployee Bondy); *R. 194*; a reference by Bobrow to a company bulletin which stated that even during the pleasure-driving ban employees leaving the plant by automobile might stop at petitioner's club house on their homeward journey; *R. 195*; the testimony of Bobrow, which as shown under 1 above, is completely disqualified.

The net content of these miscellaneous odds and ends of testimony may fairly be summarized as follows: Out of the many thousands of petitioner's employees, five (5) individuals are shown to have given at various times addresses at different geographical points;¹ that an indeterminate number of employees traveled to and from the plant by train, while others made the journey by private automobile; and that the use of gasoline for private motoring was rationed. This, plainly, furnishes no possible support for the Board's broad and categorical statements of fact above quoted.

In its Argument (Br., pp. 32-33) the Board reiterates as its findings² certain of these unsupported statements of fact; and, to cap the climax, *raises to the dignity of a Board finding* the trial examiner's quotation from the testimony of Bobrow appearing at p. 195 of the record. Since this quotation seems to constitute almost the entire Board case on this issue, we must again point out that this part of Bobrow's testimony was quoted out of its context; that the full context reveals Bobrow as explaining the reasoning of the "National Labor Board" in some undisclosed case; and that his testimony was, in any event, offered solely to establish the substance of an earlier conversation with Kress (See our main br., pp. 14-15). The serious impropriety of citing this testimony as evidence on the issue involved and, *a fortiori*, as a Board finding, is obvious.

¹ Of these 5 employees, 2 (Kahler and Bobrow) gave addresses in Syosset and Hempstead, Long Island, respectively (*R. 597, 601*). Reference to a map (cf. Bd. br., p. 3, fn. 3) will indicate that Syosset is approximately 7 air-line miles, and Hempstead approximately 11 miles, from petitioner's plant.

It was patently the Board's duty and not petitioner's to adduce evidence as to the relative ease or difficulty of solicitation outside the plant. There is proof in the record—to which the Board gives no weight—that distribution of F. A. W. literature was freely carried on outside the plant gates and at the train platform² (R. 66, 102, 138-139, 176, 183, 206); that meetings of the U. A. W. were being held at its nearby Farmingdale headquarters (R. 66, 102, 183, 210, 237, 622); and that many athletic and social functions for the employees were frequently occurring at petitioner's nearby Farmingdale clubhouse and in neighboring communities (R. 194, 612-614). These and numerous other avenues of inquiry suggest themselves, including a realistic effort to find out where the great body of employees in fact lived, what means of transportation were available to them, and what their social habits were. But the Board did not choose to investigate these factors, evidence concerning which would be indispensable to its proper determination of the issue.

In the light of the foregoing, the conclusion is inescapable that any attempt by the Board to examine in this case "the extent to which enforcement of petitioner's no-solicitation rule would deprive employees of opportunities for self-organization" (Bd. br., p. 32) would be wholly futile.³

² In its Brief in the *LeTourneau* case (No. 452, this Term), the Board argues that if distribution of union literature (which is, of course, one type of solicitation) may be readily effected outside an employer's plant, the use of the employer's property for the purpose "is not, of course, indispensable to the full exercise of [the employees'] rights under the Act" (Br., p. 17). In such a case, the Board continues, if this form of solicitation would impose any "inconvenience, risk or damage" upon the employer, the Board will find that protection of the employees' statutory interests does not require that this type of solicitation be permitted, citing *Matter of Tabin-Picker & Co.*, 50 N. L. R. B. 928.

³ As noted in our main brief (p. 16), the court below recognized that the Board here "did not take evidence upon the issue" of the competing priorities (R. 712, 713). The Board's suggestion that the court "apparently overlooked" the so-called findings in the trial examiner's report (Br., p. 40) is, we submit, an unwarranted traducement of the lower court's intelligence and awareness.

We have already shown (main br., pp. 12-13) that a proper appraisal of the "competing priorities" was not and could not have been made by the Board in the other cases cited in its decision here (R. 689) in which its doctrine respecting intraplant solicitation was evolved. Consequently, contrary to the Board's assertion (Br. pp. 41-42), it cannot avoid the effect of this Court's decision in *Eastern-Central Motor Carriers Ass'n. v. U. S.*, 321 U. S. 194 (main br., pp. 17-18). And as this Court said in *Securities and Exchange Commission v. Chenery Corp.*, 318 U. S. 80 (cited by the Board, Br. pp. 48-49) at p. 94: "

The orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained. "The administrative process will best be vindicated by clarity in its exercise." *Phelps Dodge Corp. v. Labor Board*, 313 U. S. 177, 197.

II.

Petitioner's Solicitation Rule Did Not Bar Free Discussion by Its Employees of Unions and Their Affairs.

As already shown (main br., pp. 3-4); petitioner did not seek through the solicitation rule to limit full and free discussion by the employees on any subject, union or otherwise. In other words, the employees were at perfect liberty to talk about the need of financial support for the Red Cross or about the virtues of the American Legion or the U. A. W. In petitioner's view, the point where friction and discord naturally tended to develop was the point at which ordinary discussion passed into the realm of personal pressure tactics designed, for example, to exact from an employee a contribution to charity or his pledge of adherence to a given organization. Contrary to the Board's assertion (Br., p. 37), we submit that petitioner's policy was a wholly realistic one based on fundamental principles of human psychology. This is not to say that ordinary discussion of union and other affairs may not occasionally give

rise to bitter dispute. But the flash point is obviously far more likely to occur when pressure is applied to induce an affirmative change in the employee's position.

Petitioner's policy on this point is by no means at odds with the rationale of the National War Labor Board in *Matter of General Chemical Co.*, 3 War Lab. Rep. 387 (cited by the Board, Br. pp. 25-26). The opinion in that case states (p. 396):

It is most natural that when a group of employees sit down together during the lunch hour or meet in the locker room prior to going on duty or meet together at other times and places, even though on company property, one topic of conversation is likely to be the activities of the union.

The non-union member, in turn, is entitled to protection from coercion and threats on the part of union members who may seek to impose upon him union discussions to which he does not care to listen.

This reasoning is entirely in accord with petitioner's policy of permitting free discussion of union affairs in the plant, but of protecting the non-union employee from pressure or coercion on the part of union adherents. In the *General Chemical* case, the War Labor Board rejected the recommendation of its panel that the collective agreement prohibit union activities "on works property" and limited the prohibition to working hours. But, as noted in our main brief (pp. 23, 24-25), in the *General Chemical* case the employees were already organized and the employer was engaged in collective bargaining with the union representing them—a situation in which solicitation is far less likely to create friction and discord than when the employees are still in an unorganized state.

III.

The Wearing of U. A. W. Steward Buttons Constituted a Misrepresentation of the Status of the Wearers in Petitioner's Plant.

The Board has misstated or misconstrued in an important respect petitioner's position concerning the wearing in its plant of U. A. W. steward buttons. The Board asserts (Br., p. 44) "petitioner posits its entire case on this issue on the contention that the existence of union shop stewards in a plant inevitably implies that the labor organization has been accorded recognition by management." Petitioner made and makes no such contention. It did not deny the right of the U. A. W. for its internal purposes to give to the employees involved any title it chose (cf. main br., p. 30). What petitioner did assert and the Board does not deny is that the characteristic and recognized function of a steward in modern labor relations is the adjustment with management of employee grievances (main br., pp. 29-30). While unions may designate employees as stewards to perform intraunion functions prior to recognition of the union by the employer, it is only *after* such recognition that the characteristic function of grievance adjustment may attach to the steward's office. The employees here involved were not stewards in this characteristic sense; in the plant and *vis-à-vis* management they were simply U. A. W. organizers. Nevertheless, they insisted on displaying in the plant badges representing themselves as stewards without qualification. This was a palpable misrepresentation of their status in the plant; and for the reasons set forth in our main brief (pp. 30-32) petitioner was wholly justified in insisting that the misrepresentation cease forthwith. As shown in our main brief (p. 5), petitioner formulated its policy in this matter only after careful consideration and consultation with counsel.

Conclusion.

It is respectfully submitted that the decree below should be reversed.

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January, 1945.

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No. 226

In the Supreme Court of the United States

OCTOBER TERM, 1944

REPUBLIC AVIATION CORPORATION, PETITIONER

v.
NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS
BOARD

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OPINIONS BELOW

The opinion of the court below (R. 710-715) is reported in 142 F. (2d) 657. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 673-679, 627-654) are reported in 51 N. L. R. B. 1186.

JURISDICTION

The decree of the court below (R. 716-718) was entered on April 6, 1944. The petition for a writ of certiorari was filed on July 5, 1944. The jurisdiction of this Court is invoked under Section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Petitioner promulgated a rule prohibiting solicitation of any kind in its plant. One of its employees transgressed this rule by soliciting membership for a labor organization in the plant during the lunch hour and was therefore discharged. The plant is in a small community, distant from any city. Many of the employees live at great distances from it, and their homes are scattered over a very large area. The questions are whether, in the circumstances of this case, the Board could properly find (a) that petitioner by promulgating and enforcing such a rule, insofar as it prohibited employees from soliciting union membership on their own time, interfered with the exercise of the rights guaranteed employees under Section 7 of the Act, in violation of Section 8 (1); and (b) that petitioner violated Section 8 (3) and (1) of the Act by discharging an employee who transgressed the no-solicitation rule.

2. Whether, at a time when the majority of its employees had not designated any union as a collective bargaining representative, petitioner violated Section 8 (1) of the Act in forbidding the wearing of union "shop steward" buttons in the plant by employees who were shop stewards of a union then organizing its employees, and violated

Section 8 (3) and (4) of the Act by discharging three such employees because of their refusal to remove the buttons while in the plant.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 17-18.

STATEMENT

Upon the usual proceedings under Section 10 of the Act, the Board issued its findings of fact, conclusions of law, and order (R. 688-694, 627-654).¹ Briefly summarized, the facts, as found by the Board and as shown by the evidence, are as follows:²

Petitioner, a manufacturer of military aircraft, operates a plant in Babylon Township, Suffolk County, New York (R. 629; 11-12), the only plant here involved. This Long Island plant is not near any city (R. 639, n. 14; 66, 105, 447 cf. 105); the employees live at distances ranging from as much as 10 to 50 miles from the plant (R. 638;

¹ Except as noted in its decision, the Board adopted, without restating them, the findings, conclusions, and recommendations of the Trial Examiner who conducted the hearing (R. 689). Accordingly, whenever reference is hereinafter made to the Board's findings, such reference is to findings that the Board itself formulated or to findings of the Trial Examiner that the Board adopted.

² In the following statement, the references preceding semicolons are to the Board's findings and succeeding references are to the supporting evidence.

195); their homes are scattered over a wide area; most, if not all, of them have their lunch at the plant, at which they work long hours (R. 638, 639, n. 14; 55, 56, 73, 90, 119, 132, 160, 167, 193-194, 466, 195, 106, 107, 147, 187, 541-543).³ In January 1943, the Union⁴ informed petitioner by letter that it represented a substantial number of employees and requested a conference to establish a grievance procedure for them (R. 630; 609-610). In reply, Albert Kress, assistant to petitioner's president (R. 631; 540), wrote a letter to the Union, stating that petitioner's grievance machinery was in conformity with the Act and was operating satisfactorily (R. 631; 615-616). The conference that the Union requested was never held (R. 631; 570).

At the time of this exchange of letters, petitioner had a rule, which was printed in a handbook given all employees, that read: "Soliciting of any type cannot be permitted in the factory or offices" (R. 632; Pet. Exh. 1, R. 38-39, 706).

³ Although the record does not reveal the number of employees at this plant, the number employed there at the time of the Board's hearing in April 1943 must have been very large since there is testimony that in one department alone, Shop 10, about 1,000 persons were employed on the day shift (R. 166, cf. R. 45, 46, 61, 98, 166, 210, 231, 248-249, 388, 428, 505, 541).

⁴ International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, the union that filed the charges on which the Board issued the complaint (R. 1-2).

Employee Sam Stone, a shop steward of the Union (R. 632; 64-66), passed out union application cards in the plant during the lunch period on January 15, 1943 (R. 633; 283, 343). Supervisor Bofinger summoned Stone to his office after the lunch hour, called Stone's attention to the rule against solicitation, and warned him that he would be discharged if he continued to violate the rule (R. 633; 70-71, 88-89, 283-284, 345).⁵ Stone replied that his union activities were protected by the Act and that he would continue them (R. 633; 71, 72, 89-90, 284). Immediately after giving Stone this warning, Bofinger prepared a request for Stone's release (R. 633; 288, 297, 359). Factory Manager Lasker refused, however, to approve Stone's release at this time but instructed Bofinger to observe personally whether Stone would again solicit in the plant (R. 633; 288-289, 298, 375). On January 20, Bofinger saw Stone solicit membership for the Union during the lunch

⁵ During the week preceding this warning, Stone had also solicited membership for the Union but entirely outside working hours, and his union activities had come to the attention of the management (R. 632; 90, 313-315, 349-323, 326, 361). Supervisor Bofinger, on learning of Stone's union activities, conveyed the information to his supervisors and, though told by Superintendent Wilson that Stone was violating the plant rule, Bofinger did not at this time order Stone to desist but instructed Stone's foreman to observe and report Stone's union activity to him. The foreman carried out these instructions, giving Bofinger reports almost daily, which Bofinger passed on to his superior (R. 632; 323)...

hour and forthwith discharged him (R. 634; 74, 291).⁶

On January 13, 1943, the Union held a meeting at which employees Stone, Katz, Bobrow, and Kahler were designated shop stewards (R. 630; 66; 102, 183, 237). The next day, Stone and Katz began to wear in the plant buttons which bore the legend: "UAW-CIO Steward" (R. 631; 67, 103, Bd. Exh. 15). Stone, as has been noted, *supra*, pp. 5-6, was discharged on January 20. On January 22, Katz was summoned to a meeting of management officials at which Kress, the assistant to petitioner's president, asked Katz to remove his steward button, after telling Katz that the wearing of such buttons in the plant was forbidden because, in petitioner's view, they were tantamount to a misrepresentation that management had recognized the Union (R. 643; 122, 382, 561). Katz agreed to remove the button until he could ascertain whether he had a legal right to wear it (R. 643; 122, 382, 561). At this conference, Factory Manager Lasker instructed ~~Superior~~ Doglione to discharge Katz if Katz should again wear a steward button in the plant (R. 643; 122, 383,

⁶ Bofinger had been authorized by Lasker to discharge Stone if he personally saw Stone solicit in the plant (R. 633-634; 288-289, 291, 375-376, 406-407, 552).

At an earlier conference on January 14, at which Katz was wearing his steward button (R. 643; 161), Lasker, however, told Katz that he could "wear any kind of union button, any kind of C. I. O. button, in any amount [he might] want to" (R. 642; 119, 160).

562). That night Katz discussed the question with the Union and became convinced that he had a right to wear the button (R. 643-644; 123). The next day he wore the button and Doglione discharged him, pursuant to Lasker's instructions (R. 644; 123).

On January 26, Bobrow and Kahler who, as has been noted, were union shop stewards, conferred with Kress and other management officials concerning the discharges of Stone and Katz and concerning petitioner's rules against solicitation and the wearing of steward buttons in the plant (R. 645; 187, 189, 238-239). At this conference, Kress reaffirmed petitioner's position on these matters (R. 645-646; 188-198, 239-242, 562-566), and Lasker warned Bobrow and Kahler that if they persisted in wearing steward buttons in the plant they would be discharged (R. 646; 198, 235, 241-242, 565). They continued, however, to wear their buttons and were discharged about an hour after the meeting (R. 646; 198-199, 242).

On January 15, Supervisor Doglione (R. 677; 497) asked Supervisor Bofinger to send him several employees to assist temporarily in his department (R. 632; 68-70, 279-281). When Bofinger brought Stone and another employee to Doglione, the latter, seeing that Stone was wearing a steward button, refused to accept him, saying: "I don't want to have him in my department. I have enough of this going around here." (R.

632-633; 69-70, 85). As Stone was returning to his own department, Bofinger remarked, "It seems that you fellows are not making any headway whatsoever here" (R. 633; 70, 86). On January 25, the first day on which Bobrow wore his steward button in the plant, Foreman Nepsee ordered him to stay at his bench and not to mingle with the other employees (R. 644; 183-185). When Bobrow asked whether he had done anything that merited such isolation, the foreman acknowledged that he had not, but insisted: "I just want you to follow these instructions from now on" (R. 644; 185-186).

Upon the foregoing facts, the Board concluded that petitioner had engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act. Respecting the no-solicitation rule, the Board found that in view of the conditions under which the employees worked and lived, the gas shortage and resulting transportation difficulties, the rule "entirely deprived them of their normal right to full freedom of association in the plant on their own time, the very time and place uniquely appropriate and almost solely available to them therefor" (R. 638). It further found that the rule under these circumstances "operates to render the beneficent purposes of the Act substantially impossible of achievement" (R. 639). The Board pointed out that petitioner had not shown that such a rule was necessary in maintaining production or discipline either by proof

"of special circumstances" or by reasons "warranting extension of the prohibition to non-working time, when production and efficiency could not normally be affected by union activity" (R. 674). It therefore held that this prohibition violated Section 8 (1) of the Act (R. 691). Respecting the prohibition against wearing steward buttons in the plant, the Board found that "the right of employees to wear union insignia at work has long been recognized as a reasonable and legitimate form of union activity" (R. 691), and that, contrary to the belief that actuated petitioner in forbidding the practice, union steward buttons do not imply either that the employer has contractual relations with, or favors, the union (R. 690-691). It therefore held that this prohibition violated Section 8 (1) of the Act (R. 691). The Board also found that petitioner's surveillance of Stone to determine whether he was violating the no-solicitation rule, Doglione's refusal to accept Stone as an employee, Bofinger's remark to Stone disparaging the success of the union drive, and Nepsee's restriction on Bobrow's freedom of movement constituted interference in violation of Section 8 (1) of the Act (R. 677).

To remedy the foregoing unfair labor practices, the Board ordered petitioner to cease and desist from its violations of the Act, to reinstate with back pay the four men discharged for having violated the plant rule against solicitation and the prohibition against wearing steward buttons, to

rescind the rule against solicitation insofar as it applied to the employees' own time, and to post appropriate notices (R. 678-679). On March 22, 1944, the Circuit Court of Appeals for the Second Circuit held, one judge dissenting in part, that the Board's order should be enforced (R. 710-714, 714-715). On April 6, 1944, it entered a decree accordingly (R. 716-718).

ARGUMENT

We think that the decision below is entirely correct. We do not, however, oppose the granting of a writ of certiorari in this case because we believe that the questions presented are of importance in the administration of the Act. These questions have not been but should be settled by this Court. Moreover, we agree with petitioner that the decision below is in conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit in *LeTourneau Co. of Georgia v. National Labor Relations Board*, decided June 23, 1944,* and with decisions of other circuit courts of appeals cited on pages 7 and 8 of the petition.

* The Solicitor General has authorized the filing of a petition for certiorari in the *LeTourneau* case.

The instant case involves a no-solicitation rule applicable to the interior of the plant, whereas the *LeTourneau* case involves a rule prohibiting distribution of literature in parking lots outside the plant. However, the Board adopted substantially the same principle to deal with both situations. In reviewing these orders of the Board, the Second and Fifth Circuits have adopted conflicting rationales.

The issue here presented is whether and to what extent an employer may prohibit union solicitation or other union activity on company property but engaged in on the employees' own time. In its Eighth Annual Report, the Board, noting that this problem "appeared and reappeared,"⁹ and was "of general interest," stated that it "felt it wise to evolve a clear and general policy for the guidance of employers and labor organizations alike." The Board's policy was stated in *Matter of Peyton Packing Company*, 49 N. L. R. B. 828, 843-844, modified on another point in 50 N. L. R. B. 355, enforced on other grounds, June 21, 1944 (C. C. A. 5), as follows:¹⁰

⁹ National Labor Relations Board, Eighth Annual Report (Gov't Print. Off., 1944) p. 29. The following are some of the many cases in which the Board was called upon to consider the legality of such a plant rule or of its enforcement: *Matter of Carter Carburetor Corp.*, 48 N. L. R. B. 374, enforced, 140 F. (2d) 714 (C. C. A. 8); *Matter of Denver Tent & Awning Co.*, 47 N. L. R. B. 586, enforced, 138 F. (2d) 410 (C. C. A. 10); *Matter of Piedmont Shirt Co.*, 49 N. L. R. B. 313, enforced, 138 F. (2d) 738 (C. C. A. 4); *Matter of United States Cartridge Co.*, 47 N. L. R. B. 896; *Matter of North American Aviation, Inc.*, 56 N. L. R. B., No. 169; *Matter of Scullin Steel Co.*, 49 N. L. R. B. 405; *Matter of The Monarch Co.*, 56 N. L. R. B., No. 312; *Matter of Marshall Field & Co.*, 34 N. L. R. B. 1, 10-11. See also the cases cited at pages 7 and 8 of the petition for a writ of certiorari.

¹⁰ In concluding that the discharges in the *Peyton* case were in violation of the Act, the Board relied not only on the proposition that a no-solicitation rule is presumptively violative of the Act if applied to the employees' own time but upon its finding "that the respondent's purpose in promulgating and enforcing the rule, was to prevent the self-organization

The Act, of course, does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time. Working time is for work. It is therefore within the province of an employer to promulgate and enforce a rule prohibiting union solicitation during working hours. Such a rule must be presumed to be valid in the absence of evidence that it was adopted for a discriminatory purpose. It is no less true that time outside working hours, whether before or after work, or during luncheon or rest periods, is an employee's time to use as he wishes without unreasonable restraint, although the employee is on company property. It is therefore not within the province of an employer to promulgate and enforce a rule prohibiting union solicitation by an employee outside of working hours, although on company property. Such a rule must be presumed to be an unreasonable impediment to self-organization and therefore discriminatory in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline.¹¹

of its employees" (49 N. L. R. B. at 844, cf. 847). In enforcing the Board's Order, the Circuit Court of Appeals for the Fifth Circuit sustained only the second ground, saying: "The rule against solicitation though reasonable *and in lawful form*, was administered * * * in an arbitrary and discriminatory manner." [Italics supplied.]

¹¹ After setting forth this extract from its decision in the *Peyton* case, the Board declared in its Eighth Annual Report, at page 29:

In the instant case in finding that petitioner's no-solicitation rule, insofar as it applied to the employees' own time, was in derogation of the employee rights guaranteed in Section 7 of the Act, the Board, citing the *Peyton* case, adhered to the construction of the statute adopted in that decision (R. 689). The Board pointed out that under the circumstances here involved, enforcement of the no-solicitation rule would render virtually nugatory any attempt by petitioner's employees to exercise the rights guaranteed them by the statute. The Board found "that many of [petitioner's] employees live long distances from [its] plant and that their homes are scattered over a wide area" (R. 638). It further found that in plants like petitioner's "where transportation is particularly limited through gas rationing * * * and workers come from a radius of anywhere from 10 to 50 miles to work the shop would be the natural place for workers to talk to one another and persuade one another to join the union" (R. 638). Therefore, to quote from the Board's findings (R. 638), "Under the conditions obtain-

The rule thus formulated by the Board is designed to protect the rights of employees under the Act, but at the same time to discourage needless interference with the uninterrupted production so vital under present wartime conditions. Since the decision in the *Peyton Packing* case, the Board has in general followed the rule there announced that an employer may properly prohibit union activities during working time, but not during the employees' own time even though they are on company property. * * *

ings in January 1943, the [petitioner's] employees, working long hours in a plant engaged entirely in war production and expanding with extreme rapidity, were entirely deprived [by the no-solicitation rule] of their normal right to 'full freedom of association' in the plant on their own time, the very time and place, uniquely appropriate and almost solely available to them therefor." After thus emphasizing the serious detrimental impact of the rule upon the employees' freedom of self-organization, the Board turned to a consideration of the possible detriment to the employer's legitimate interests that would flow from abrogation of the rule as applied to the employees' non-working time. It declared in this connection that "the record discloses no special circumstances, and the [petitioner] advances no cogent reason, warranting extension of the prohibition [of solicitation] to non-working time, when production and efficiency could not normally be affected by union activity" (R. 689).

In sustaining the Board, the court below held that the Board could properly weigh "what in fact will be the prejudice to the interests of the employer in allowing electioneering to go on during lunch hours, and what will be the benefit to the employees; and what will be his benefit and their prejudice in disallowing it" (R. 712). The court further held that the Board is empowered in the first instance to determine "whether the

benefit shall prevail over the prejudice or vice versa" (R. 712), and that "only in cases where [the reviewing courts] believe that there is no reasonable warrant for the priority actually awarded" (R. 713), may the courts set aside the Board's determination.

In contrast to the ruling of the court below, the Circuit Courts of Appeals for the Fifth, Sixth, Eighth, and Tenth Circuits have either held or said that the promulgation and enforcement of plant rules prohibiting solicitation on the employees' own time may not be held by the Board to constitute a violation of the Act unless the rules are adopted or applied for the purpose of discouraging membership in a labor organization. See cases cited at pages 7 and 8 of the petition for a writ of certiorari. Since, moreover, these courts exclude as irrelevant the competing considerations that the Board and the court below deem controlling, they accord no weight whatever to the Board's determination of which competing interest should prevail.

Except for this case, the courts have not passed upon the validity of an employer's rule against the wearing of union steward buttons in a plant as yet unorganized. The question is intertwined with the preceding one, for the same benefit-prejudice issues are present. Since the question will undoubtedly recur and is of importance in the administration of the Act, we likewise do

not oppose a review of this aspect of the decision below.

CONCLUSION

For the foregoing reasons, we do not oppose the granting of the petition for a writ of certiorari.

Respectfully submitted.

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AUGUST 1944.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

SECTION 1

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

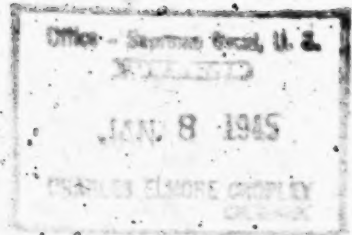
(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *

SEC. 10.

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 226

REPUBLIC AVIATION CORPORATION, PETITIONER.

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 710-715) is reported in 142 F. (2d) 657. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 673-679, 627-654) are reported in 51 N. L. R. B. 1186.

JURISDICTION

The decree of the court below was entered on April 6, 1944 (R. 716-718). The petition for a writ of certiorari was granted on October 9, 1944 (R. 718). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code,

as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the Board could properly find that petitioner, by promulgating and enforcing a rule which prohibited employees from soliciting union membership in the plant during non-working time, interfered with the exercise of the rights guaranteed employees under Section 7 of the Act, in violation of Section 8 (1).

2. Whether, at a time when the majority of its employees had not designated any union as a collective bargaining representative, petitioner violated Section 8 (1) of the Act in forbidding the wearing of union "shop steward" buttons in the plant by employees who were shop stewards of a union then organizing its employees.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 54-55.

STATEMENT

Upon the usual proceedings under Section 10 of the Act, the Board issued its findings of fact, conclusions of law, and order (R. 673-679, 627-654). Briefly summarized, the facts, as found by the

¹ Except as noted in its decision, the Board adopted, without restating them, the findings, conclusions, and recommen-

Board and as shown by the evidence, are as follows:²

Petitioner, a manufacturer of military aircraft, operates a plant in Babylon Township, Suffolk County on Long Island, New York (R. 629, 639, n. 14; 11-12, 16), the only plant here involved. This plant is not in or near any city (R. 639, n. 14; 447, cf. 66, 105, 146); the employees live at distances ranging from as much as 10 to 50 miles from the plant (R. 638, 195, 257, 591, 593, 605); their homes are scattered over a wide area (R. 638, 639, n. 14; 412, 421, 430, 479, 497, 540, 591, 593, 595, 597, 599, 601, 603, 605, 626).³ The plant is solely engaged in the production of materials for war and during 1942 and 1943 was expanding with extreme rapidity (R. 638, 639, n. 14; 12, 41, 48, 541, 543). Most, if not all, of the employees have their

residences in the vicinity of the Trial Examiner who conducted the hearing (R. 674). Accordingly, whenever reference is hereinafter made to the Board's findings, such reference is to findings that the Board itself formulated or to findings of the Trial Examiner that the Board adopted. See pp. 10, n. 12, 40-41, *infra*.

² In the following statement, the references preceding semicolons are to the Board's findings and succeeding references are to the supporting evidence.

³ The record discloses the names of the communities in which various of the employees live; reference to any map of Long Island and New York establishes the distances of each of these communities from the plant and also demonstrates that the communities are scattered over a wide area. The record discloses that many employees use the railroads in coming to and from work (R. 66, 105, 146). The distances which employees using the railroad must travel daily can be judicially noticed from a map.

lunch at the plant (R. 638; 55, 56, 72-73, 90, 119, 167, 187, 193-194, 466), at which they work long hours (R. 638, 639, n. 14; 72, 105-107, 132, 147, 261).⁴ Due to gas rationing the normal peacetime use of the automobile is drastically reduced and transportation to the vicinity of the plant is difficult (R. 638, 639, n. 14; 26, 66, 105, 146, 194, 195).

The Union⁵ began organizing petitioner's employees during 1942 (R. 630; 101-102, 138), but it did not come out into the open until early in January 1943, when it began distributing literature outside the plant (R. 630; 66, 102, 138-139, 176, 183, 206); soliciting membership applications (R. 630; 66, 82-83, 90-94, 132, 138-141), and holding meetings (R. 630; 66, 102, 132, 183, 210, 237). On January 13, 1943, the Union held a meeting at which employees Stone, Katz, Bobrow, Kahler and Rosenkrantz were designated shop stewards (R. 630; 64-66, 102, 154, 183, 237). The next day, Stone, Katz and Rosenkrantz began to wear in

⁴ Although the record for security reasons (R. 388) does not reveal the number of employees at this plant, the number employed there at the time of the Board's hearing in April 1943 must have been very large (R. 45, 61, 98, 166, 210; 231, 248-249, 326, 388, 428, 505, 541). The plant was referred to as "huge" (R. 170) and as employing "thousands" (R. 46, 388). There is testimony that its employment had increased 70 or 80 times since 1939 (R. 541) and that in one department alone, Shop 10, about 1,000 persons were employed on the day shift (R. 166).

⁵ International Union, United Automobile, Aircraft & Agricultural Workers of America, UAW-CIO, the union that filed the charges on which the Board issued the complaint. (R. 1-3).

the plant buttons which bore the legend: "UAW-CIO Steward" (R. 631; 67, 103, 113, 134, 154; Bd. Exh. 15).⁶

On January 15, 1943 Stone passed out union application cards in the plant during the lunch period (R. 633; 283, 343). Supervisor Bofinger summoned Stone to his office after the lunch hour, and called Stone's attention to the rule against solicitation (R. 633; 70-71, 88-89, 284). This rule had been in force since March, 1941 and was printed in a handbook given all employees (R. 632, n. 4, 634; 38-41, 50). It stated that "Solicitation of any type cannot be permitted in the factory or offices" (R. 632; Pet. Exh. 1, R. 39-40). Bofinger warned Stone that he would be discharged if he continued to violate the rule (R. 633; 70-71, 88-89, 283-284, 345, 359). Stone replied that his union activities were protected by

⁶ Prior to this time no union buttons of any kind had been worn by petitioner's employees (R. 81, 132, 134, 137, 343-344).

⁷ On other occasions during the week preceding this warning, Stone had also solicited membership for the Union in the plant outside working hours, and his union activities had come to the attention of the management (R. 632; 90, 276-278, 313-315, 319-323, 326, 361). Supervisor Bofinger, on learning of Stone's union activities, conveyed the information to his supervisors and, though told by Superintendent Wilson that Stone by soliciting in the plant was violating the plant rule, Bofinger did not at this time order Stone to desist but instructed Stone's foreman to observe and report Stone's union activity to him (R. 632; 276-278, 313-315, 319-321, 325-326). The foreman carried out these instructions, giving Bofinger reports almost daily, which Bofinger passed on to his superior (R. 632; 278, 321-323, 325).

the Act and that he would continue them. (R. 633; 71, 72, 89-90, 284). Immediately after giving Stone this warning, Bofinger prepared a request for Stone's release (R. 633; 288, 297, 359). Factory Manager Lasker refused, however, to approve Stone's release at this time but instructed Bofinger to observe personally whether Stone would again solicit in the plant (R. 633; 288-289, 298, 359, 375). Stone continued soliciting on his own time (R. 633; 72-73, 90, 92, 289-290). On January 20, Bofinger saw Stone solicit membership for the Union during the lunch hour and forthwith discharged him (R. 634; 92, 291).^{*}

On January 22, Rosenkrantz, who had been wearing his union steward button since January 14, was interviewed by Kress, the assistant to petitioner's president, and by other management officials who told him that the wearing of a steward button in the plant was forbidden (R. 631, n. 3, 646-647; 454, 556-559). Rosenkrantz thereupon removed his button and promised to cease wearing it (R. 631, n. 3, 646-647; 558-559). Later, that same day, Katz, who likewise had worn his union steward button since January 14, was summoned to a meeting of management officials in petitioner's office building (R. 643; 120, 559). At this meeting both the solicitation of

^{*} Bofinger had been authorized by Lasker to discharge Stone if he personally saw Stone solicit in the plant (R. 633-634; 288-289, 291, 375-376, 406-407, 552).

union members on company property and the wearing of steward's buttons was discussed (R. 643; 121-123, 561). Kress told Katz that petitioner had no objection to its employees talking about the Union, but that the rule forbade their asking anyone to join it (R. 121, 559-560).⁹ Kress further told Katz that wearing a steward button, absent recognition by petitioner of the Union as the representative of the employees, amounted to a misrepresentation of existing facts and asked Katz to remove his button (R. 643; 122, 561). Katz replied that he questioned Kress' statement but that he would remove the button until he had an opportunity to satisfy himself as to his "right" to wear it, and that if he found that he was within his rights in doing so, would resume it (R. 643; 122, 561).¹⁰ That night Katz discussed the question with the Union and became con-

⁹ Kress interpreted petitioner's rules as permitting conversation about the Union even while employees were on the job so long as their discussion did not interfere with production (R. 122, 556, 559-560, 563). Katz told Kress that the prohibition against solicitation of union membership on company premises would make it impossible to organize a union (R. 121).

¹⁰ Katz on this occasion also explained to Kress his understanding that as a steward in an unorganized plant his duties consisted chiefly of organizing the employees (R. 122). Katz testified that he understood that in an unorganized plant as opposed to an organized plant the steward's duties were mainly those of an organizer (R. 103, 154-156, 168, 174-173, 175), and that he so explained to the employees in the plant (R. 156). Stone and Bobrow gave similar testimony (R. 66, 191, 214-220).

vinced that he had a right to wear a steward button (R. 643-644; 123). The next day he wore the button and was discharged pursuant to Lasker's instructions (R. 644; 123).

On January 25 Bobrow began to wear his steward button to work and on January 26 Kahler appeared at work wearing his steward button (R. 644; 183-184, 209, 226, 237). On January 26, Bobrow and Kahler conferred with Kress and other management officials concerning the discharges of Stone and Katz, petitioner's rules against solicitation and the wearing of steward buttons in the plant (R. 645; 187, 189, 238-239). At this conference, Kress reaffirmed petitioner's position on these matters (R. 645-646; 188-198, 239-242, 562-566). With respect to steward buttons, Kress stated that "with all the developments in labor organization in recent years, that a steward had gotten to certain pretty definitely and clearly defined functions and responsibilities in the operation of a union agreement, and that since there was no union agreement that obviously they could not have those duties and responsibilities" in petitioner's plant; that petitioner looked "on the wearing of steward buttons as a misrepresentation;" that for all we knew there might be other organizations trying to organize our employees; that if we permitted them to wear a steward's but-

¹¹ Bobrow replied that he "thought the company was a little bit naive on this question because unfortunately the workers knew only too well that this was not a union shop" (R. 192).

ton these other organizations might come back and want the same right" (R. 645; 564). Lasker warned Bobrow and Kahler who had on their union steward buttons that if they persisted in wearing such buttons in the plant they would be discharged (R. 646; 198, 235, 241-242, 565). They continued, however, to wear their buttons and were discharged about an hour after the meeting (R. 646; 198-199, 242).

Upon the foregoing facts, the Board concluded that petitioner had engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act. Respecting the no-solicitation rule, the Board found that in view of the conditions under which the employees worked and lived, the gas shortage and resulting transportation difficulties, the plant was "the natural place for workers to talk to one another and to persuade one another to join the union" (R. 638). The Board found that the rule "entirely deprived them of their normal right to full freedom of association in the plant on their own time, the very time and place uniquely appropriate and almost solely available to them therefor" (R. 638). It further found that the rule under these circumstances "operates to render the beneficent purposes of the Act substantially impossible of achievement" (R. 639). The Board pointed out that petitioner had not shown that such a rule was necessary in maintaining production or discipline either by proof

"of special circumstances" or by reasons "warranting extension of the prohibition to non-working time, when production and efficiency could not normally be affected by union activity" (R. 674). It therefore held that this prohibition violated Section 8 (1) of the Act (R. 674-675).

Respecting the prohibition against wearing steward buttons in the plant, the Board stated that "the right of employees to wear union insignia at work has long been recognized as a reasonable and legitimate form of union activity" (R. 676), and that, contrary to the belief that actuated petitioner in forbidding the practice, union steward buttons do not imply either that the employer has contractual relations with, or favors, the union (R. 675-676). It therefore held that by adopting and enforcing this prohibition petitioner violated Section 8 (1) of the Act (R. 676).

The Board concluded that by discharging the four employees for engaging in union activities which it unlawfully forbade petitioner violated Section 8 (3) of the Act.¹² The Board also found

¹² The Board reversed the Trial Examiner's finding (R. 634-637) that the "no-solicitation" rule had been discriminatorily applied to Stone, but it sustained his finding (R. 637-639) that the discharge of Stone was in violation of Section 8 (3) because, in the circumstances of the instant case, petitioner's "no-solicitation" rule itself violated Section 8 (1) of the Act (R. 674-675). The Board likewise reversed the Trial Examiner's finding (R. 647) that petitioner's prohibition upon the wearing of steward buttons was motivated by anti-

that petitioner had engaged in interference in violation of Section 8 (1) of the Act in certain other respects (R. 677), not here in issue (Pet. Br., p. 2, n. 1).

To remedy the foregoing unfair labor practices, the Board ordered petitioner to cease and desist from its violations of the Act, to reinstate with back pay the four men discharged, to rescind the rule against solicitation insofar as it prohibits union activity and solicitation on company property during the employees' own time, and to post appropriate notices (R. 678-679). On March 22, 1944, the Circuit Court of Appeals for the Second Circuit held, one judge dissenting in part, that the Board's order should be enforced (R. 710-714, 714-715). On April 6, 1944, it entered a decree accordingly (R. 716-718).

SUMMARY OF ARGUMENT

I

The discharge of employee Stone as a penalty for soliciting union members in the plant during the lunch hour was violative of Section 8 (3) and (1) of the Act unless petitioner was privileged to prohibit its employees from engaging in such activities. Petitioner's rule prohibiting union activities, but sustained his finding (R. 649) that the discharges were violative of Section 8 (3) because, in the circumstances of this case, the prohibition violated Section 8 (1) of the Act regardless of the motive which induced its adoption (R. 675-676).

solicitation in the plant during non-working time was itself violative of Section 8 (1) and consequently could not justify the discharge. Employees are not deprived of their rights of self-organization upon entering the employer's property. Although the protection against employer interference which is accorded to those rights by Section 8 (1) of the Act is literally absolute, the Board has sought to harmonize the legitimate proprietary interests of employers with the statutory interests of the employees by holding that employers may properly prohibit union solicitation during working time, but that, in the absence of special circumstances, they may not prohibit solicitation during non-working time, since normally such activities could not adversely affect legitimate employer interests.

The Board recognizes that, while normally union solicitation during non-working time does not adversely affect legitimate employer interests, special circumstances may exist in a particular plant because of which union solicitation, even during non-working time, might be detrimental to production or discipline. In such cases the Board balances the necessity of permitting solicitation to enable the employees to exercise their rights under the Act against the injury to the employer which such solicitation would impose, and determines whether the interests of employees or of the employer should give way.

The Board viewed the instant case in the light of its general policy. It found that under the circumstances here present, enforcement of the no-solicitation rule would make it virtually impossible for petitioner's employees to exercise the rights guaranteed them by the statute. It found that to permit union solicitation on non-working time would, since no special circumstances whatever were shown, impose little, if any detriment upon petitioner's legitimate interests. The Board therefore concluded that the rule, insofar as it prohibited union solicitation during non-working hours was an unreasonable interference with the statutory rights of the employees and, as such, violated Section 8 (1) of the Act.

II

The discharge of employees Katz, Bobrow and Kahler as a penalty for wearing union steward buttons in the plant was violative of Section 8 (3) and (1) of the Act. The rights guaranteed in Section 7 include the right of employees to wear in the plant as elsewhere buttons indicating their membership or position in a labor organization. Petitioner does not challenge the proposition that a shop steward, like any other officer, is entitled to wear a button indicating his position in the union. Petitioner contends, however, that the characteristic function of a shop steward is to deal with management as a representative of em-

ployees, and argues that the wearing of a steward button necessarily implies that management maintains contractual relations with the union. But the function and status of a shop steward depends on the organization in which he functions, the stage of development of the organization and the nature of relations between the organization and management. Appointment of shop stewards prior to the designation of the union as exclusive bargaining representative or establishment of collective bargaining relationships is a common practice. The position of Katz, Bobrow and Kahler as stewards of the Union organizing petitioner's employees was in no way inconsistent with the general understanding of a steward's functions. On the basis of the record in this case as well as its experience the Board found that the wearing of "steward" buttons did not constitute a representation that petitioner either approved or recognized the union, and that it was unreasonable to assume that the employees would be misled by the wearing of such buttons.

ARGUMENT

I

The Board properly found that application of petitioner's "no-solicitation" rule to prevent union solicitation by employees on non-working time interfered with the exercise of rights guaranteed in Section 7 and violated Section 8 (1) of the Act

It is undisputed that petitioner discharged employee Stone as a penalty for soliciting members

for the Union in the plant during the lunch period. This discharge, like the suspensions in the *Le Tourneau* case (No. 452, this Term, Bd. Br., p. 12), was an unfair labor practice under Section 8 (3) of the Act, unless petitioner was privileged to prohibit its employees from engaging in such activities.¹³ The Board found that

¹³ Petitioner's contention that the discharge of Stone could not be deemed violative of Section 8 (3) even if the rule were invalid (Br., pp. 27-28) rests upon a misconception of the meaning of the term "discrimination" as used in Section 8 (3). Petitioner asserts that the term "plainly means the making of a difference in treatment of one or more individuals as compared to others" and argues that since it treated solicitors for all causes alike its discharge of Stone did not meet that test. But clearly Stone was discharged for engaging in a lawful union activity. The Board has uniformly and consistently held that the prohibition of discrimination "forbids the employer to affect or change an employment relationship because of the employee's union membership or activity." *National Labor Relations Board, Third Annual Report* (Govt. Print. Off., 1939), p. 81; *Matter of Botany Worsted Mills*, 292, 300-304, enforced, 160 F. (2d) 263, 268-269 (C. C. A. 3). If there is a casual connection between an employee's union activity and his discharge the discharge is discriminatory within the meaning of Section 8 (3). *National Labor Relations Board v. Arcade-Sunshine Co.*, 118 F. (2d) 49, 51 (App. D. C.), certiorari denied, 313 U. S. 567. Whether an employer who discriminates in this sense also differentiates among employees is wholly irrelevant. On petitioner's theory an employer who discharged an employee for joining a union would be beyond the reach of Section 8 (3), if only it were the employer's policy to discharge all employees who joined social, religious or political as well as labor organizations. The courts have recognized that a discharge is violative of Section 8 (3) whenever its purpose or effect is to discourage union activities protected by the Act. *National Labor Relations Board v.*

under the circumstances of this case petitioner's rule, insofar as it prohibited union solicitation in the plant on non-working time, was itself violative of Section 8 (1) of the Act and therefore, afforded no defense to the discrimination practiced against Stone.

In our brief in the *Le Tourneau* case, pp. 19-21, 34-39, we have argued that employees do not, by entering upon the employer's property, lose the rights of self-organization which the Act guarantees. The literally absolute prohibition upon employer interference with the exercise of those rights which is contained in Section 8 (1) of the Act is as applicable to interference accomplished by virtue of an employer's control over his property as it is to interference which stems from other aspects of the employer's control over the employment relation. Since, as we have shown (*Le Tourneau* brief, pp. 21-23, 35-36), an employer violates Section 8 (1) of the Act whenever he engages in conduct which tends to interfere with the free exercise of self-organizational rights regardless of his motive in doing so, it is apparent that plant rules which inhibit solicitation of union members fall within the literal language of the Act.

Peter Cailler Kohler Swiss Chocolates Co., 130 F. (2d) 503, 506 (C. C. A. 2); *National Labor Relations Board v. Good Coal Co.*, 110 F. (2d) 501, 505 (C. C. A. 6), certiorari denied, 310 U. S. 630. See also cases cited in our brief in the *Le Tourneau* case, pp. 12, 23-24.

But this does not mean that the statute precludes all recognition of competing legitimate interests of employers any more than the constitutional guarantee of freedom of speech precludes recognition of competing legitimate interests of the community as a whole. Just as the public streets are not primarily forums for the dissemination of information, so manufacturing plants are not primarily forums for solicitation of membership in labor organizations. Therefore, although neither activity may be completely curtailed, insofar as the one may interfere with the convenience of pedestrians, and the other with efficient production, both are subject to modification. Compare *Jamison v. Texas*, 318 U. S. 413, 415-416; *Hague v. C. I. O.*, 307 U. S. 496, 514-516; *Thornhill v. Alabama*, 310 U. S. 88, 105-106; *Valentine v. Chrestensen*, 316 U. S. 52, 53; *Schneider v. State*, 308 U. S. 147, 162-163; *Cantwell v. Connecticut*, 310 U. S. 296, 304; and *Martin v. Struthers*, 319 U. S. 141, 143, with *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, 198-200.

Determination of the extent and manner in which modification of the rights of employees should be permitted in the light of conflicting employer interests, involving, as it does, appraisal of the nature and importance of the interests of both groups in relation to public policy and of the impact of measures adopted by employers to

protect their interests upon effectuation of the statutory policies, is a function which the Board by virtue of its specialized knowledge and experience in the field of labor relations is peculiarly well qualified to perform."

Resolving such questions "belongs to the usual administrative routine of the Board." *National Labor Relations Board v. Hearst Publications, Inc.*, 322 U. S. 111, 130. This the court below properly recognized; it acknowledged the Board's power to draw upon experience gained in administration of the statute and upon its "general familiarity with the conditions of industry" (R. 713) in formulating broad principles applicable to the numerous cases involving employer attempts to curtail union solicitation on plant premises.

A. The Board's policy

In 1943, after extensive experience with the problems presented by union solicitation on plant premises, the Board formulated a general policy "designed to protect the rights of employees under the Act, but at the same time to discourage need-

¹⁴ Cf. *National Labor Relations Board v. Hearst Publications, Inc.*, 322 U. S. 111, 130; *Medo Photo Supply Corp. v. National Labor Relations Board*, 321 U. S. 678, 684; *Franks Bros. Co. v. National Labor Relations Board*, 321 U. S. 702, 704-706; *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332; *Securities and Exchange Commission v. Chenery Corp.*, 318 U. S. 80, 89, 92; *Gray v. Powell*, 314 U. S. 402, 412-413.

less interference with the uninterrupted production so vital under present wartime conditions."¹⁵

A statement by the Board respecting this general policy "of which its order here was a particular application" (*Securities and Exchange Commission v. Chenery Corp.*, 318 U. S. 80, 92), is set forth in its Eighth Annual Report:

A number of cases which came before the Board during the fiscal year 1943 involved the question of whether and to what extent an employer may prohibit or limit union solicitation or other activity on company time or property. The fact that the problem thus appeared and reappeared indicated that it was of general interest, and the Board therefore felt it wise to evolve a clear and general policy for the guidance of employers and labor organizations alike. The Board's policy was stated in *Matter of Peyton Packing Company*, 49 N. L. R. B. 838, as follows:

"The Act, of course, does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time. Working time is for work. It is therefore within the province of an employer to promulgate and enforce a rule prohibiting union solicitation during working hours. Such a rule must

¹⁵ National Labor Relations Board, *Eighth Annual Report* (Gov't Print. Off., 1944), p. 29.

¹⁶ *Idem.*

be presumed to be valid in the absence of evidence that it was adopted for a discriminatory purpose. It is no less true that time outside working hours whether before or after work, or during luncheon or rest periods, is an employee's time to use as he wishes without unreasonable restraint, although the employee is on company property. It is therefore not within the province of an employer to promulgate and enforce a rule prohibiting union solicitation by an employee outside of working hours, although on company property. Such a rule must be presumed to be an unreasonable impediment to self-organization and therefore discriminatory in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline." * * * Since the decision in the *Peyton Packing* case, the Board has in general followed the rule there announced that an employer may properly prohibit union activities during working time, but not during the employees' own time even though they are on company property.

Although petitioner alleges (Br., p. 22) that the Board has been inconsistent in its position, this is not the case. As early as March 18, 1939, the Board in *Matter of Milland Steel Products Co.*, 11 N. L. R. B. 1214, 1223, enforcement denied, 113 F. (2d) 800, 805-806 (C. C. A. 6), said: "We have grave doubts that the solicitation of union members on an employer's property by an employee

on his own time is subject to lawful prohibition by an employer." Likewise, the Board has never departed from the view expressed in *Matter of Botany Worsted Mills*, 4 N. L. R. B. 292, 303, enforced 106 F. (2d) 263-269 (C. C. A. 3), that a "rule prohibiting outside activities during working hours [is] in itself unobjectionable. * * *". The three cases cited by petitioner (Br., p. 22, n. 20) are in accord with these principles.¹⁷

The distinction between working and non-working time, thus drawn by the Board, was foreshadowed during the legislative debates on the Act.¹⁸

¹⁷ The facts of the *Nash-Kelvinator* and *Marshall Field* cases are set forth at pages 28, 30, *infra*. In each it was shown that a non-solicitation rule was necessary to protect the operation of the business or to prevent disorder, circumstances which the Board's statement of general policy expressly takes into account. In the third case (*Matter of Bemis Bros. Rag Co.*, 28 N. L. R. B. 430, 440), the trial examiner's report showed that the employee in question had admittedly been soliciting during working hours. Inasmuch as the validity of the company's rule against solicitation was not in issue, the Board's report treats the matter cursorily and does not explicitly state when the solicitation occurred. But the case obviously must be read in the light of its facts.

¹⁸ 79 Cong. Rec. 7675-7676, 74th Cong., 1st Sess., May 16, 1935.

Mr. HASTINGS. Referring to section 7, which has been read to the Senate several times by the Senator from Maryland [Mr. TYNINGS], does the Senator from New York understand that that section would permit employees to do all these things *during working hours*?

Mr. WAGNER. May what be done *during working hours*?

Mr. HASTINGS. The various things mentioned in section 7. It states that—

1. *The employees' interest.*—The Board's conclusions rest upon sound considerations of industrial practice and policy. Personnel management in this country uniformly recognizes the wisdom of granting employees freedom to enjoy normal social intercourse with each other on their employer's premises. Watkins & Dodd, *The Management of Labor Relations* (1938), p. 106; Kre

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining" and so forth.

Mr. WAGNER. The Senator asks whether these things may be done *during working hours*?

Mr. HASTINGS. Yes.

Mr. WAGNER. Of course, if employees did that *when they should be working*, they would be subject to discharge.

Mr. HASTINGS. If they did that *during working hours* and in consequence were discharged, would not the employer be guilty of an unfair labor practice? I ask that because section 8, paragraph (d), says that—

"It shall be an unfair labor practice for an employer (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7."

Mr. WAGNER. No sensible person would interpret that language to mean that while a factory is at work the workers could suddenly stop their duties to have a mass meeting in the plant on the question of organization.

Mr. HASTINGS. The Senator does not think the language is subject to that construction.

Mr. WAGNER. Why, of course not.

Mr. HASTINGS. I desired to be certain that the *Record* would be clear upon that point.

Mr. WAGNER. The *Record* may be clear upon that point. [*Italics added.*]

A. L., *Foremanship Fundamentals* (1942), p. 250. It was on this premise that the Board, in *Matter of Tomlinson of High Point*, 58 N. L. R. B., No. 188, expressly noted that rules prohibiting union solicitation during non-working time constituted a serious impediment to the exercise of the rights of self-organization. The Board said:

Normally, the plant and its premises are the only place in which all the employees congregate, and hence may afford the only practicable opportunity for the initial steps by which self-organization is effected.

Employer practices which to the employees appear unfair often arouse immediate resentment; methods of redress, perhaps through self-organization, will inevitably be discussed during lunch hours and rest periods, the earliest opportunities following the occurrence of the grievance, in which the employees are able to get together and talk freely. In view of the nature of the subject matter and the availability of the public to be reached (cf. *Bakery & Pastry Drivers & Helpers v. Wohl*, 315 U. S. 769, 775), plant premises during non-working hours are "natural and proper places for the dissemination of information and opinion"¹² concerning self-organization.

Unions in recent years have continued the historic practice of using the daily social contacts occurring on the employer's premises to further

¹² *Schneider v. State*, 308 U. S. 147, 163.

organization.²⁰ The necessity and importance of utilizing the plant as a place in which to contact fellow employees have been increased since house to house canvassing, one of the most effective of union proselytizing techniques,²¹ has been rendered difficult if not impossible by the fact that—²²

Crowded housing facilities in war production areas usually imply long journeys to and from the job for many workers. In several areas according to reports, substantial numbers of workers are commuting distances up to and in excess of 60 miles. The effect of this is to add 2, 3 or more hours to the employees' workday.

And, as the Board has pointed out, the present day factors "of rapid plant expansion and turn-

²⁰ *E. W. A. Shop Stewards' Manual*, issued by United Federal Workers of America, C. I. O., p. 6; Thomas, R. J., *Automobile Unionism*, Report to the 1941 Convention of the U. A. W., C. I. O., p. 11; New Orleans C. I. O. Industrial Union Council, Feb. 1942, *How to Build Your Union*, p. 15; Lincoln, Jonathan Elayer, *The City of the Dinner Pail* (New York, 1900), p. 131.

²¹ See *Martin v. Struthers*, 319 U. S. 141, 145-146; *Schneider v. State*, 308 U. S. 147, 164; Lorwin and Flexner, *The American Federation of Labor* (1933), 352; International Ladies Garment Workers Union, *Handbook of Trade Union Methods* (1937), p. 10; Brooks, Robert, R. R., *When Labor Organizes* (1938), Chap. I ("Organizing a Union").

²² Egans, Duane, *Problem of Absenteeism in Relation to War Production*, U. S. Department of Labor, Bureau of Labor Statistics, Monthly Labor Review, January 1943, p. 6; Kennedy, Eleanor V., *Absenteeism in Commercial Shipyards*, United States Department of Labor, Bureau of Labor Statistics, Bull. No. 734 (1943); Thomas, R. J., *Housing for Defense* (1942), p. 16.

over of personnel," increase the likelihood that the plant and its premises alone afford adequate avenues for the communication of self organizational information to and between employees. *Matter of Tomblinson of High Point, Inc.*, 58 N. L. R. B., No. 188.

The Board's conclusions accord with those reached by the National War Labor Board. In its decision in the leading case, *Matter of General Chemical Co.*, 3 War Lab. Rep. 387, 396, Public Member Wayne Morse, speaking for a unanimous Board, said:

It is the opinion of the Board that the recommendation of the panel on union activity should be modified to read that no soliciting of members or other union activities shall be carried on by any employee or by any representative of the union during working hours. The Board has observed the workings of the provisions on union activity of many collective bargaining agreements which attempt in various language to prevent the soliciting of new union members on company property. It is the opinion of the Board that *any such restriction does not represent a very realistic approach to the problem, nor is it conducive to industrial harmony.* [Italics added.]

It is most natural that when a group of employees sit down together during the lunch hour or meet in the locker room prior to going on duty or meet together at other

times and places, even though on company property, one topic of conversation is likely to be the activities of the union. To provide that a union member shall be dismissed from employment or disciplined in some other way if he discusses union affairs with a non-union fellow employee while on company property tends only to drive such activities underground and fosters suspicion, distrust, and devices of subterfuge.

The non-union member, in turn, is entitled to protection from coercion and threats on the part of union members who may seek to impose upon him union discussions to which he does not care to listen. But in a free society neither he nor the company is entitled to a ruling that denies union members the right to discuss union affairs and the benefits of membership in the union with employees during leisure-time periods, provided that they do so in a legitimate and proper manner. However, management is entitled to insist that no so-called union activity be carried on within its plant while men are at work. It is that principle which the Board protects in its directive order on union activity.

The War Labor Board has consistently applied these principles in all of the cases which have come before it.²³

²³ See *In re Marlin-Rockwell Corp.*, Cases Nos. 754 and 757, 12 L. R. R. 309, 310; *Matter of Dwight Mfg. Co.*, Case No. 111-2527-D, 14 L. R. R. 813; *In re Allied Chemical & Dye Corp.*, Case No. 636, 12 L. R. R. 215. In the single case upon which petitioner relies to prove (Br., pp. 22-23) that, the

2. *The employer's interest.*—While the enforcement of rules prohibiting solicitation on non-working time is, as petitioner concedes (Brief, pp. 20, 23), normally detrimental to the exercise of the right of self-organization, the Board has repeatedly found, both before and after its decision in the *Peyton Packing* case, that their abrogation cannot and will not, in the normal case, appreciably affect efficiency, plant discipline or other legitimate employer interests.²⁴ The Board is therefore entirely justified in concluding, as the court below held (R. 713), that unless in a par-

War Labor Board has acted inconsistently, the Board did not pass on the propriety of such a provision. It merely directed that a contract to be executed between the company and the union should not "make reference to the company's statement of policy" issued five years earlier, to which the union had then agreed and which included a clause prohibiting union activity on the company's property. *Matter of J. I. Case Co.*, N. W. L. B. Case No. 130, 16 L. R. R. Man. 1057, 1059. It is to this statement of policy attached to the War Labor Board's opinion as Appendix A, and rejected by the War Labor Board as a basis for relations between the parties, that petitioner seemingly refers.

²⁴ See for example, *Matter of Letz Mfg. Co.*, 32 N. L. R. B. 563, 569; *Matter of L. C. Smith & Corona Typewriters, Inc.*, 11 N. L. R. B. 1382, 1391; *Matter of William Davies Co.*, 37 N. L. R. B. 631, 636-639, enforced, 135 F. (2d) 179 (C. C. A. 7); certiorari denied, 320 U. S. 770; *Matter of United States Cartridge Co.*, 47 N. L. R. B. 896, 905-906; *Matter of Denver Tent & Avning Co.*, 47 N. L. R. B. 586, 592-593, enforced, 138 F. (2d) 410 (C. C. A. 10); *Matter of Carter Carburetor Co.*, 48 N. L. R. B. 354, 355, enforced, 140 F. (2d) 714 (C. C. A. 8); *Matter of Piedmont Shirt Co.*, 49 N. L. R. B. 313, 317, 318, enforced, 138 F. (2d) 738 (C. C. A. 4); *Matter of Scullin Steel Co.*, 49 N. L. R. B. 405, 409-412.

particular case an employer can show that "special circumstances make the rule necessary in order to maintain production or discipline," protection of the employees' statutory interests requires abrogation of the rule.

The Board recognizes that because of peculiar circumstances which may exist in an individual plant or type of business enterprise union solicitation might adversely affect production. In *Matter of Monarch Co.*, 56 N. L. R. B. 1749, the Board refused to pass upon the validity of a "no-solicitation" rule because the Trial Examiner had erroneously excluded evidence in the form of testimony by a competent witness that union solicitation within the plant had caused a decline in production. Had such evidence been admitted the Board would have considered whether, under all the circumstances, effectuation of the policies of the Act required imposition of such detriment upon the employer. The case of *Nash Kelvinator Corp.*, 18 N. L. R. B. 738, 741-744, cited by petitioner (Br., p. 22), aptly illustrates the point. In that case the Board found that a rule prohibiting solicitation at all times on the company's premises was not violative of the Act because it had been adopted "during a period of industrial strife * * * after union activity on the respondent's time and property had seriously disrupted production operations, had flouted plant discipline, and was threatening further discord."

But, as the Board held in *Matter of Scullin Steel Co.*, 49 N. L. R. B. 405, 409-412, a mere showing that union solicitation or discussion has resulted in occasional and isolated instances of disorderly conduct which did not interfere with production, is not sufficient to justify a rule prohibiting orderly solicitation or discussion on non-working time. The Board there said (49 N. L. R. B. at 411-412):

"It is neither necessary nor reasonably calculated to insure plant discipline that employees be required to refrain from orderly union discussion and activity when they are on plant property on their own time.

* * * While, * * * an employer may * * * promulgate and enforce non-discriminatory reasonable rules designed to maintain plant discipline, and to that extent limit the exercise of the employees' statutory rights, he may not further encroach upon these rights by outlawing union activity under circumstances which present no clear and convincing expectancy that such activity will affect discipline of employees in the performance of their work.

This is not to say that an employer may not preserve plant discipline by punishing indulgence in words or conduct, whether in the course of solicitation or at any other time, which are "plainly likely to cause a breach of the peace by the addressee." *Chaplinsky v. New Hampshire*,

315 U. S. 568, 573. But we do say that if "no clear and present danger of * * * breach of the peace can be thought to be inherent in the activities of every person who approaches the premises of an employer and publicizes the facts of a labor dispute" (*Thornhill v. Alabama*, 310 U. S. 88, 105), certainly no such dangers can be thought to be inherent in the activities of every union adherent who approaches a non-union fellow worker and attempts to persuade the latter to join a union. And a contrary conclusion cannot be justified by proof that solicitation may on occasion have given rise to a "trivial rough incident" or "a moment of animal exuberance." *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U. S. 287, 293, 295. Were this not true communication by working men as to matters of vital concern to them and to the public would be subject to prohibition by the states as well as by employers.

Illustrative of the Board's careful appraisal of situations in which legitimate employer interests might possibly be adversely affected by union solicitation on non-working time is the *Marshall Field* case, 34 N. L. R. B. 1, 10, also cited by petitioner (Br., p. 22). In that case the Board took cognizance of the peculiarities inherent in the operation of a retail department store and held that an employer could properly prohibit union solicitation of employees who "are constantly engaged in serving the public." Recently,

in *Matter of Famous Barr Co.*, 59 N. L. R. B., No. 188, the Board again had occasion to note that union solicitation on the selling floor of a department store "might conceivably be disruptive of * * * business", and held that although the employer could not prohibit employees from engaging in solicitation before and after work and during luncheon and rest periods at places in the store where customers were not allowed, the employer could properly prohibit union solicitation on the selling floor at all times.²⁵

It is evident therefore that petitioner's assertion (Br., p. 13), that the Board does not "consider the impact of [permitting solicitation during non-working time] upon the safety and efficiency in production in which the public and the employer alike have a vital interest" is simply not true. The Board's intense concern with the effect of union solicitation on production is evidenced in its decision in *Matter of Piedmont Shirt Co.*, 49 N. L. R. B. 313, 318, enforced, 138 F. (2d) 738 (C. C. A. 4). In that case the Board took pains to point out that its decision holding an

²⁵ Recognition that peculiar circumstances exist in particular types of business enterprises which indicate that unrestrained union activities during non-working time might adversely affect production and that in such cases, therefore, limitations upon such activities may be appropriate is shown by the decision of the National War Labor Board in *In re American Telephone & Telegraph Co.*, N. W. L. B. Case No. 111-5908-D, 15 L. R. R. 463-464, noted by petitioner (Br., p. 23, n. 23).

employer's prohibition of union activities unlawful was not to be construed to mean "that an employer may not enforce *reasonable* rules forbidding union activities, merely because they were less stringently enforced in the past. This is especially so in these times of grave national emergency when it is essential that the employees exert every effort to obtain maximum production." (Italics added.) Compare *Matter of Tabin-Picker Co.*, 50 N. L. R. B. 928, discussed in our brief in the *LeTournéau* case, pp. 17-18.

B. Application of the Board's policy to this case

The Board considered the particular circumstances of the instant case in the light of its general policy (R. 689). It first examined the extent to which enforcement of petitioner's no-solicitation rule would deprive employees of opportunities for self-organization. The Board found "that many of [petitioner's] employees live long distances from [its] plant and that their homes are scattered over a wide area" (R. 638). It further found that in plants like petitioner's "where transportation is particularly limited through gas rationing * * * and workers come from a radius of anywhere from 10 to 50 miles to work * * * the shop would be the natural place for workers to talk to one another and persuade one another to join the Union" (R. 638): This conclusion is buttressed by the fact that, as the Board noted "most if not all of the employees eat their

lunch at the plant" (R. 638). Therefore, to quote from the Board's findings (R. 638), "Under the conditions obtaining in January 1943, the [petitioner's] employees working long hours in a plant engaged in war production and expanding with extreme rapidity, were entirely deprived [by the no-solicitation rule] of their normal right to 'full freedom of association' in the plant on their own time, the very time and place, uniquely appropriate and almost solely available to them therefor."

After pointing out that enforcement of the no-solicitation rule under these circumstances would render virtually nugatory any attempt by petitioner's employees to exercise the rights guaranteed them by the statute, the Board turned to a consideration of the possible detriment to the employer's legitimate interests that would flow from abrogation of the rule as applied to the employees' non-working time. In this connection it declared that "the record discloses no special circumstances, and the [petitioner] advances no cogent reason, warranting the extension of the prohibition [of solicitation] to nonworking time, when production and efficiency could not normally be affected by union activity" (R. 689).

Petitioner seeks to justify its rule, in large part, as a solution of problems which would be fully met by a rule which did not apply to union solicitation (Br., p. 13). Petitioner explains the no-solicitation rule as a measure designed to avoid

"The great number and endless variety of potential demands upon the employees' time and money" made "by solicitors for a host of organizations and causes—many of them eminently deserving others of questionable or even fraudulent character" (Br., pp. 3, 13). But the Board's order requires that petitioner's rule be rescinded only "insofar as it prohibits union activity and solicitation on company property during the employees' own time" (R. 679). The rule, as modified, will still be effective to curb the evils of unbridled solicitation which petitioner fears. The matter of unionization, unlike many of the causes solicitation for which is included within petitioner's ban, is intimately related to the employment situation and is therefore indigenous to the plant premises. Upon this subject the rule impinges with peculiar force. As the Board found, petitioner can and does offer to other causes a substitute within the plant for the personal solicitation which it prohibits (R. 634-635). Petitioner's plant newspaper, public address system, personnel office, and other facilities can be and are made available to the Red Cross and similar organizations with complete propriety (R. 28-31, 36-37, 46-49, 52-58, 63-64, 82, 192-194, 203, 466). But the grant of such facilities to a union would constitute illegal support under the Act both because of their pecuniary value and because it would give to the union the very appearance of official management approval which petitioner, in

another connection, is so anxious to avoid (Br., pp. 29, 30-31). Hence, the net effect of petitioner's rule is to prohibit, in the case of labor organizations alone, all solicitation within the plant.

Insofar as petitioner's reasons for its rule apply specifically to union activities, they are posited not upon alleged conditions peculiar to petitioner's plant, but upon an argumentative hypothesis, applicable, if at all, to industry generally. Petitioner introduced no evidence that there was any friction between its employees, or any other evidence that would give color to an assertion that union solicitation in its plant might interfere with production or result in disturbing incidents. Stone and Katz both solicited extensively in the plant without any friction resulting (R. 66, 82-83, 90-94, 140-141). Petitioner, instead, baldly contends that, as a universal proposition, at least in unorganized plants, solicitation outside of working hours results in "disharmony and friction among the employees" and should therefore be banned (Br., pp. 23-25). But this argument, like the similar argument of respondent in the *LeTourneau* case (cf. Brief on behalf of the Board in the *LeTourneau* case, pp. 30-32), proves too much. It would serve equally well to justify a prohibition of union solicitation at any time, even off the employer's premises. For what this argument really amounts to is that an employer should be permitted to ban the "results" (Br., p. 24) of

any union solicitation, that is, the creation of differences of opinion among the employees about joining a union or remaining aloof. The avoidance of such results would ban union activities completely.

Moreover, petitioner's contention that the creation of such differences of opinion has an adverse effect on production is directly contrary to the experience of the Board and the War Labor Board. The insubstantiality of petitioner's fears that union solicitation permitted during non-working hours would interfere with production becomes apparent in the light of its admission that it found no need to bar full and free employee *discussion* as distinguished from solicitation, on any subject, including unionization, on non-working time (Br., p. 4). Kress, assistant to petitioner's president, for example, assured the union employees that the plant was not a "penitentiary" and that they could "talk" about the Union even during working time (R. 122, 556, 559, 560, 563). But the very dictum upon which petitioner relies to establish that the "results" of union solicitation would impede production (Br., pp. 23-24) attributes precisely the same detrimental effect on production to union discussion on non-working time.²⁶ If, as petitioner in effect concedes, union

²⁶ "Solicitation, *argument, the hurling of epithets in tense discussion* before work has been commenced or in the noon hour, may reasonably be expected to carry a certain animus over into work hours." [Italics added.] *Midland Steel Products Co. v. National Labor Relations Board*, 113 F. (2d) 800, 805 (C. C. A. 6).

discussion even during working time imposes no "inconvenience, risk or damage"²⁷ upon it, it is difficult to understand how union solicitation during non-working time could do so.

Petitioner's attempt to distinguish between "solicitation" and "discussion" (R. 556) highlights the lack of realism inherent in its approach to this entire problem. Any remarks about a union addressed by a union adherent to another employee could be construed as an effort to persuade the latter to become a union member and hence as an act of solicitation. Cf. Brief on behalf of Petitioner in *R. J. Thomas v. Colliys*, No. 14, this Term. Indeed, Factory Manager Lasker, contrary to the position petitioner has taken in this case (Br., p. 4), construed the rule against solicitation to mean that "you can't talk about the union" (R. 642; 118-119, 160-161).²⁸ A verbal formula so meaningless can afford no solution to the basic question.²⁹

²⁷ *National Labor Relations Board v. Citizens Service Oil Co.*, 122 F. (2d) 149; 152 (C. C. A. 2).

²⁸ Katz testified that he asked Lasker the following hypothetical question (R. 118-119, 160-161): "I said, 'Supposing I am sitting eating my lunch, during the lunch hour, and a friend of mine comes over to me and says, 'Hello, Bob, how is the union going?'. What am I supposed to say to him, according to company rules?' To which Lasker replied, 'You are supposed to say, he said, 'I am sorry, I can't speak to you. We are on company property. Please see me outside company property, before we can * * * discuss the union.'"

²⁹ Rules banning union solicitation during working hours only are commonly incorporated in union contracts and their enforcement is not difficult. United States Department of

In sustaining the Board, the court below held that the Board could properly weigh "what in fact will be the prejudice to the interests of the employer in allowing electioneering to go on during lunch hours, and what will be the benefit to the employees; and what will be his benefit and their prejudice in disallowing it" (R. 712). The court further held that the Board is empowered in the first instance to determine "whether the benefit shall prevail over the prejudice or vice versa" (R. 712), and that "only in cases where [the reviewing courts] believe that there is no reasonable warrant for the priority actually

Labor, Division of Labor Standards, Bull. No. 686 (1942), *Union Agreement Provisions*, pp. 31, 243, but see also p. 294; Lieberman, Elias, *The Collective Labor Agreement*, Harpers (1939), pp. 194-195; Levinson, Edward, *Labor on the March* (1938), pp. 167-168; Wechsler, James A., *Labor Baron* (1944), p. 65; *In re Waukesha Motor Co.*, N. W. L. B. Case No. 401, 12 L. R. R. 436; *In re Ohio Public Service Co.*, N. W. L. B. Case No. 169, 12 L. R. R. 176; *Contract between Bethlehem Steel Co. and C. I. O.*, 13 L. R. R. 616, 621; *In re Armstrong Brothers Tool Co.*, N. W. L. B. Case No. 32, 10 L. R. R. Man. 960, 961.

Following the principles enunciated in the *Peyton Packing* case and in the instant case the Board has recently held in *Matter of South Carolina Granite Co.*, 58 N. L. R. B., No. 264, that an employer who, over objection by the union, insisted upon incorporating in a collective agreement a provision prohibiting union activity on his premises at all times had thereby refused to bargain collectively and had violated Section 8 (5) of the Act since the employer made no showing of special circumstances which necessitated such a rule as a safeguard to production. Cf. *Richfield Oil Corp. v. National Labor Relations Board*, 143 F. (2d) 860 (C. C. A. 9), enforcing, 49 N. L. R. B. 593.

awarded" (R. 713) may the courts set aside the Board's determination. Since, as even Judge Swan's dissenting opinion conceded (R. 714), petitioner's rule is "of course an impediment" to the exercise of the rights guaranteed under the Act, and since petitioner did not establish that it would suffer any detriment whatever from abrogation of the rule, the court below properly concluded that the Board's award of "priority" to the statutory interests of the employees was not without warrant (R. 713). Certainly in the absence of any evidence which would tend to show that the particular factory and factory grounds here involved were not "natural and proper places" for the dissemination of information and opinion" concerning labor organizations, it could make no difference, even if it were true, that the employees might be able to carry on organizational activities elsewhere. The Act as well as the Constitution demands that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. State*, 308 U. S. 147, 163.

As we have stated in our brief in the *LeTourneau* case (pp. 36-39), unlike the court below and the Circuit Court of Appeals for the Ninth Circuit,³⁰ the Circuit Court of Appeals for the Fifth, Sixth, Eighth and Tenth Circuits in cases involv-

³⁰ See *Richfield Oil Corp. v. National Labor Relations Board*, 143 F. (2d) 860, 861-862 (C. C. A. 9).

ing, the validity of no-solicitation rules fail to accord any weight whatever to the Board's construction of the statute and, since they exclude as irrelevant the competing considerations which the Board deems controlling, they completely disregard the Board's determination of which competing interest should prevail. For the reasons therein set forth, as petitioner evidently concedes (Br. pp. 11-12), we submit that the principles applied by these courts are erroneous and unsound.

Petitioner argues that the Board did not consider the facts as to the relative importance to the employees and to the employer of the no-solicitation rule (Br., p. 13), and refers to a statement of the court below (R. 713) which seems to assume that the Board made no specific findings on this point. The findings to which we have previously referred appear in the trial examiner's report (R. 638-639), which was adopted by the Board in its decision (R. 674); the court below apparently overlooked the significance of the report. The findings, as adopted, which are summarized *supra*, pp. 2-10, 32-37, do not rely merely upon general conclusions of policy, but show the injury to the employees' statutory rights which will result from enforcement of the no-solicitation rule and the absence of any proof of compensating benefit to the employer. The supporting evidence consists of the rule itself, which shows on its face that it does interfere with the employees' right to

organize, and in addition evidence indicating that in this case such activities would be severely hampered if they could not take place in the plant; detriment to the employees' rights was thus plainly shown. In so far as solicitation during non-working hours is concerned, which would normally not affect the employer's business, such evidence establishes a *prima facie* case which will stand unless the employer adduces testimony showing some special need for the rule in his plant. It is not incumbent on the Board to disprove the existence of such special circumstances before the employer has sought to establish their existence.

Here, as the court below held, the employer was afforded full opportunity at the hearing to introduce evidence tending to show what benefit accrued to him from enforcement of the rule and what detriment would flow from its abrogation, but failed to do so. Under these circumstances, petitioner's reliance upon this Court's decision in *Eastern-Central Assn. v. United States*, 321 U. S. 194 (Br., pp. 17-18) is misplaced. In that case, as the opinion makes clear (321 U. S. at 201-203), the cause was remanded to the Commission because the Commission, in formulating its policy, had in effect excluded from consideration a factor (competition) which the statute required it to take into account. The Board's policy, as we have demonstrated above, was formulated with due regard for all relevant factors, including those stressed by petitioner, and conforms to the statu-

tory standards. It is therefore subject to none of the defects to which this Court referred in the *Eastern* case.

II

The Board properly found that petitioner's prohibition of the wearing of union "steward" buttons in the plant interfered with the exercise of rights guaranteed in Section 7 and violated Section 8 (1) of the Act

It is undisputed that petitioner discharged employees Katz, Bobrow and Kahler as a penalty for wearing union steward buttons in the plant. If the employees were entitled to engage in such activities their discharge for doing so was clearly unlawful.

The Board, in its decision, pointed out that "the right of employees to wear union insignia at work has long been recognized as a reasonable and legitimate form of union activity" (R. 676). Mr. Lloyd K. Garrison, in an opinion rendered on July 11, 1941, accompanying an arbitration award said:

The wearing of a [union] button is a traditional and customary incident of membership in a bona fide labor organization—a sort of visible receipt for dues * * *

It seems to me that if a man has a right to be a member of a union, he has a right to those things which traditionally go with membership— * * * to wear his button * * * 31

³¹ *In re Arbitration between Allis-Chalmers Mfg. Co. and United Automobile Workers (C. I. O.)*, 9 L. R. R. Man. 836-837.

Petitioner apparently concedes (Br., pp. 5-6, 28), that Section 7 of the Act protects the right of employees to wear buttons indicating their membership in a labor organization, within a plant as elsewhere.³² This protection extends, as petitioner admits (Br., pp. 28, 30), to buttons indicating an employee's rank or position in a labor organization. In *Matter of Armour & Co.*, 8 N. L. R. B. 1100, 1111-1112, the Board held that a steward was a union officer who "was entitled to wear [a] button indicating his rank and function in the labor organization," and that the employer's order "directing a removal of the button constituted an interference with the rights guaranteed in Section 7 of the Act."³³ The Board followed this ruling in the instant case.

³² See Levinson, Edward, *Labor on the March* (1938), p. 167: "The right to talk during one's lunch hour and to wear the insignia of one's organization seems an obvious enough privilege in a free country."

³³ Accord: *Matter of Karp Metal Products Co.*, 42 N. L. R. B. 119, 138-139, 141, enforced *sub silentio*, on this point, 134 F. (2d) 954 (C. C. A. 2); *Matter of National Container Corp.*, 57 N. L. R. B., No. 102. Rosenfarb, Joseph, *The National Labor Policy and How It Works* (1940), comments as follows (p. 158): "If union activity, such as solicitation of members, which is not in derogation of discipline and efficiency can be carried on on the company premises, a fortiori the carrying of union insignia. This is particularly true of the union steward, who is the union representative in the plant. His functioning in the plant, if not disturbing to the proper carrying on of work, is part of the employee's right of self-organization."

Petitioner does not challenge the proposition that a shop steward, like any other officer, is entitled to wear a button indicating his rank and position in the union. But petitioner posits its entire case on this issue on the contention that the existence of union shop stewards in a plant inevitably implies that the labor organization has been accorded recognition by management (Br., p. 29, 30).

Petitioner's contention that since it had not recognized the union the wearing of shop steward buttons by its employees constituted "misrepresentation", depends entirely for its validity upon proof that the office of shop steward cannot and does not exist except where a labor organization has been accorded recognition by an employer. This, petitioner does not even attempt to establish. Petitioner merely asserts that the "characteristic" function of a shop steward "is that of dealing with management on behalf of the employees he represents" and that "This characteristic function can, of course, attach to his office only when it has been accorded some form of management recognition" (Br., p. 30). But the available evidence convincingly demonstrates that the functions and status of a shop steward depend on the organization in which he functions, the stage of development of the organization, the nature of relations between the organization and the management in each situation; and that stewards often function

before a union has been accorded recognition, in which case they are, of course, not regarded as management recognized representatives at all.

In 1921, before the advent of industrial unionism and collective bargaining in the mass production industries, a shop steward was characterized as "a worker's official who looks after the local union's interests in a particular shop or establishment" and "collects the union dues of members."³⁴ With the development of large scale union organization in the mass production industries, union stewards continued to function in two capacities; that is, as representatives of the employees in bargaining with the management once bargaining relationships had been established, and as "union wheel horses or 'spark plugs' in the plant"³⁵ both before and after the institution of collective bargaining in the plant. The documents relied on by petitioner itself (Br., pp. 40-45)³⁶ emphasize that after union recognition the dues collecting and other organizational aspects of the

³⁴ Browne, Waldo, *What's What in the Labor Movement* (1921), p. 434.

³⁵ Brooks, Robert R. R., *As Steel Goes* (1940), p. 209.

³⁶ These are United States Department of Labor, Division of Labor Standards, Bull. No. 59 (1943), *Preparing a Steward's Manual*; United Automobile Workers, C. I. O., International Education Committee, *How to Win for the Union—A Handbook for UAW-CIO Stewards and Committeemen*, 6th ed. (February 1943); Textile Workers Union of America, C. I. O., *So You're a Steward. A Handbook for TWUA Stewards and Department Committees* (New York 1943).

steward's job are equal in importance to the representation aspects. And there is certainly no reason why a union should not select its stewards at an early stage in the organizational process and have them perform the organizing functions which the job entails.

That stewards play a distinct and important role in union organization during the pre-recognition stage is evidenced by the testimony of the stewards in the instant case. Bobrow testified that after he was appointed steward he began to supervise the recruiting efforts of other union members, "I told them to the best of my knowledge where new members could be enrolled, and where possible helped members of the union enroll these people" (R. 214-217; see also 102, 156, 175-176). As an example of his activities in this respect Bobrow testified that if a union member in his department spoke to a fellow worker "trying to encourage him to join the union," he would ask Bobrow to accompany him, "believing that perhaps I might be able to clarify that particular worker on any objections or any points which were not clear to him regarding the union" (*id.*). The wearing of a steward's button serves to identify the responsible and informed union leaders in the various departments to whom union members can turn for assistance in persuading others to join and from whom non-members can receive authoritative answers to questions concerning the union. That the appointment of stewards and

their wearing of steward buttons is thus a legitimate and significant aid to self organization, is therefore not open to question.

In practice, the selection of stewards before collective bargaining relationships have been established is a common phenomenon, as the cases before the Board show.³⁷ Illustrative also is the

³⁷ *Triplex Screw Co. v. National Labor Relations Board*, 117 F. (2d) 858, 861 (C. C. A. 6) (cases of *Koberha* and *Graczyk*); *National Labor Relations Board v. William Davies Co.*, 135 F. (2d) 179, 181-182 (C. C. A. 7), certiorari denied, 320 U. S. 770 (cases of *McNally* and *Canning*); *National Labor Relations Board v. Karp Metal Products Co.*, 134 F. (2d) 954 (C. C. A. 2), enforcing *sub silentio*, 42 N. L. R. B. 119, 138-139 (entire group of union stewards); *Matter of Armour & Co.*, 8 N. L. R. B. 1100, 1110 (case of *Davis*); *Matter of National Container Corp.*, 57 N. L. R. B., No. 102 (cases of *Valentine*, *Cianci*, *Kinstler* and *Landsberg*); *Matter of Mt. Clemens Pottery Co.*, 46 N. L. R. B. 714, 746 (case of *Félong*).

The practice of selecting shop stewards early in the union's organizing campaign was discussed by William Green in his testimony in *Alabama State Federation of Labor v. McAdory*, 18 So. (2d) 810 (Ala.), certiorari granted, November 25, 1944, No. 588, this Term. He there stated (R. 253-254): "Both prior to and after the receipt of the charter, but before the local union has become recognized as the exclusive bargaining representative for all the employees in the plant or in the craft in the plant, the members of the union as a group select, from time to time, individuals, groups or committees (the members of which are known as 'Shop Committeemen' or 'Shop Stewards'), comprised of employees of the plant and of the local and national representatives of the international union and of the A. F. of L., to present to the employer in regular meetings the views, requests, problems and grievances of the members. These representatives so selected by the members of the union are usually chosen by way of departments or smaller units thereof within the plant. They meet with the representatives of the management regularly

following news item, headed "North American Votes CIO in Key N. L. R. B. Poll" in *United Automobile Worker*, March 15, 1943, p. 8:

Livingston, who spent several weeks here, in active charge of the drive declared that the unceasing, all-ours (sic)-of-the-day-and-night work of a number of persons made the UAW-CIO victory possible. In addition to the officers, rank and file, *shop stewards* and committee members from the plant who are members of Local 645, UAW-CIO, those who worked on the drive are * * * [Italics added.]

In those cases, as in this case, to use petitioner's phrase (Br., p. 30) "the employees involved were obviously not stewards in [the] sense" of being management recognized spokesmen for the Union. The primary function of the stewards at the Republic plant prior to recognition, was, as the stewards themselves repeatedly testified, to lead the organizing activities of the Union, generally in the plant, and particularly in their own department in the endeavor through negotiation, bargaining, solicitation and persuasion, to obtain from the employer adjustment of grievances and obtain from the employer certain rights, privileges and benefits on behalf of the members and thereby improve the working conditions of the employees thus represented. Frequently, such negotiations result in the establishment of formal grievance machinery. For the benefit of representatives of the union who present the grievances, the Educational Department of the international union issues pamphlets to all of these representatives and to all members of the union."

ments (R. 66, 102-103, 154-156, 168, 171-173, 175, 191, 214-217). Katz testified that when Kress asked him what the duties of a steward were, during his conversation with him on January 22 (*supra*, pp. 6-7), he told him that "he was mainly to help build up a Union *at this particular stage*" (R. 122; italics supplied). Katz also testified that he gave a similar version of his duties to employees to whom he talked (R. 156). The stewards also understood, however, that "if there was any possibility of taking up grievances, [they] would do so, if [they] were allowed to do so, if [they] could get some results from the management" (R. 156, 219-220, 557, 561). Katz told the employees that he "was ready if any grievances came up to talk about them *if [he] was able to do something*" (R. 103; italics supplied). Since the Union was at this time attempting to persuade petitioner to permit it to handle grievances (R. 195, 179-180, 609-610), it was natural and entirely permissible for it to select and start the training of stewards in anticipation of achieving the desired agreement.

Under these circumstances the Board was clearly correct in finding as it did (R. 675) that the wearing of a union steward button is not "a representation that the employer either approves or recognizes the union in question as the representative of the employees."³⁸ And the court below

³⁸ Compare the Board's finding in *Matter of National Container Corp.*, 57 N. L. R. B., No. 102, that the wearing of a

properly rejected petitioner's unsubstantiated attack upon that finding which, as the court pointed out, "is preeminently one for those versed in trade union lore" (R. 714). Clearly, therefore, there is no basis for petitioner's repeated characterizations of the Union's action in instructing its stewards to wear buttons indicating their rank as "misrepresentation" (Br., pp. 29, 30).

Even assuming, however, that the employees might have shared petitioner's erroneous understanding of the usual meaning of the term "steward," there is no reason whatever to assume that they would have concluded, from the single fact that "Steward" buttons were worn in the plant, that the management had accorded any kind of recognition to the Union. As the Board noted (R. 647), "to so assume constitutes an unwarranted traducement of their awareness and intelligence." As Bobrow told Kress during the conference on January 26 (*supra*, p. 8) "the workers knew only too well that this was not a union shop" (R. 192). At the very time this question came up, the Union was announcing in a leaflet that **"UAW-CIO SEEKS GRIEVANCE SET-UP FOR RACERS"** (R. 178, 621). The leaflet reproduced a letter of January 7, 1943, addressed to steward button indicates nothing more than "the rank and function of the wearer in [the union], regardless of whether the organization represents a minority or a majority of the employees."

petitioner, in which the Union requested the establishment of a grievance procedure (R. 179-180, 609; see also R. 107, 189, 195, 561). Certainly, therefore, the Union was not misleading the employees. Neither was the management. Its position on the handling of grievances was perfectly clear (R. 545-546, 569, 578; see also R. 192).

Here petitioner admittedly permits its employees to wear other union buttons (Br., p. 5, 28), and it offers no explanation of the distinction which it makes between the two kinds of buttons, other than its erroneous assertion as to the meaning of the term "steward." Since, therefore, there was in fact no reason to believe that the wearing of steward buttons would confuse the employees, it is not surprising that petitioner, as the Board noted (R. 675-676) produced no employee who suffered from any delusion as to the management's position. As the court below properly held (R. 714), petitioner's failure to buttress its speculative apprehensions by presenting evidence that any employee was misled, or that any employee had attempted to present grievances through a representative, adequately supports the Board's conclusion that the wearing of steward buttons would give rise to no danger to any legitimate employer interest.

Petitioner's novel contention that it was required to take preventive measures because of its

duty under the Act to remain neutral (Br. 5, 30-31) falls with its untenable assertion that the wearing of steward buttons would mislead the employees concerning the management's attitude toward the Union. If, in fact, petitioner feared that its position with respect to the handling of grievances might be obscured by the fact that a few employees were wearing "Steward" buttons (a fear which the Board found to be without foundation) (R. 675-676), clarification required no more than a simple statement to the employees such as was sent to the Union on January 20 (R. 615-616, 180).

Petitioner attempts to strengthen its justification of the steward button rule by asserting that the employees who were chosen to act as stewards in its plant were to perform functions "which did not differ materially from their previous function as members of the organizing committee" (BE, p. 29). But the allocation of functions among and between offices in the Union is not a legitimate concern of the management. It does not rest with petitioner to decide whether employees who hold office in a union perform services commensurate with their titles. Petitioner's attempt to interfere in this matter underscores the illegal character of its restraint on the employees' activities.

We submit that the Board properly concluded that since petitioner failed to establish that it would suffer any detriment whatever as a result

of the wearing of steward buttons in the plant, its prohibition of this legitimate form of union activity constituted illegal interference within the meaning of Section 8 (1) of the Act (R. 676).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision below should be affirmed.

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JANUARY 1945.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C.; Sec. 151, *et seq.*) are as follows:

SEC. 1.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor

organization, or contribute financial or other support to it: * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. * * *

SEC. 10.

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive.

SUPREME COURT OF THE UNITED STATES.

Nos. 226 and 452.—OCTOBER TERM, 1944.

226	Republic Aviation Corporation, Petitioner, vs. National Labor Relations Board.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.
452	National Labor Relations Board, Petitioner, vs. Le Tourneau Company of Georgia.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[April 23, 1945.]

Mr. Justice REED delivered the opinion of the Court.

In the *Republic Aviation Corporation* case, the employer, a large and rapidly growing military aircraft manufacturer, adopted, well before any union activity at the plant, a general rule against soliciting which read as follows:

"Soliciting of any type cannot be permitted in the factory or offices."

The Republic plant was located in a built-up section of Suffolk County, New York. An employee persisted after being warned of the rule in soliciting union membership in the plant by passing out application cards to employees on his own time during lunch periods. The employee was discharged for infraction of the rule and, as the National Labor Relations Board found, without discrimination on the part of the employer toward union activity.

Three other employees were discharged for wearing UAW-CIO union steward buttons in the plant after being requested to remove the insignia. The union was at that time active in seeking to organize the plant. The reason which the employer gave for the request was that as the union was not then the duly designated representative of the employees, the wearing of the steward buttons in the plant indicated an acknowledgment by the management of the authority of the stewards to represent the employees in dealing with the management and might impinge upon the employer's policy of strict neutrality in union matters and might interfere with the existing grievance system of the corporation.

2 *Republic Aviation Corp. vs. Nat'l Labor Relations Board.*

The Board was of the view that wearing union steward buttons by employees did not carry any implication of recognition of that union by the employer where, as here, there was no competing labor organization in the plant: The discharges of the stewards, however, were found not to be motivated by opposition to the particular union, or we deduce, to unionism.

The Board determined that the promulgation and enforcement of the "no solicitation" rule violated Section 8(1) of the National Labor Relations Act as it interfered with, ⁶strained and coerced employees in their rights under Section 7 and discriminated against the discharged employee under Section 8(3).¹ It determined also that the discharge of the stewards violated Section 8(1) and 8(3). As a consequence of its conclusions as to the solicitation and the wearing of the insignia, the Board entered the usual cease and desist order and directed the reinstatement of the discharged employees with back pay and also the rescission of "the rule against solicitation in so far as it prohibits union activity and solicitation on company property during the employees' own time." 51 N. L. R. B. 1186, 1189. The Circuit Court of Appeals for the Second Circuit affirmed, 142 F. 2d 193, and we granted certiorari, 323 U. S. —, because of conflict with the decisions of other circuits.²

In the case of *Le Tourneau Company of Georgia*, two employees were suspended two days each for distributing union literature or circulars on the employees' own time on company owned and policed parking lots, adjacent to the company's fenced-in plant, in violation of a long standing and strictly enforced rule, adopted prior to union organization activity about the premises, which read as follows:

149 Stat. 449, 452:

"SEC. 7. Employees shall have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

"SEC. 8. It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

² *Midland Steel Products Co.*, 7 N. L. R. B., 113 F. 2d 800; *N. L. R. B. v. Williamson-Dickie Mfg. Co.*, 130 F. 2d 260, 267; *Boeing Airplane Co.*, 6 N. L. R. B., 140 F. 2d 423; *Le Tourneau Co. of Georgia v. N. L. R. B.*, 143 F. 2d 67.

"In the future no Merchants, Concern, Company or Individual or Individuals will be permitted to distribute, post or otherwise circulate handbills or posters, or any literature of any description on Company property without first securing permission from the Personnel Department."

The rule was adopted to control littering and petty pilfering from parked autos by distributors. The Board determined that there was no union bias or discrimination by the company in enforcing the rule.

The company's plant for the manufacture of earth moving machinery and other products for the war is in the country on a six thousand acre tract. The plant is bisected by one public road and built along another. There is one hundred feet of company-owned land for parking or other use between the highways and the employee entrances to the fenced enclosures where the work is done, so that contact on public ways or on non-company property with employees at or about the establishment is limited to those employees, less than 800 out of 2100, who are likely to walk across the public highway near the plant on their way to work, or to those employees who will stop their private automobiles, buses or other conveyances on the public roads for communications. The employees' dwellings are widely scattered.

The Board found that the application of the rule to the distribution of union literature by the employees on company property which resulted in the lay-offs was an unfair labor practice under Section 8(1) and 8(3). Cease and desist, and rule rescission orders, with directions to pay the employees for their lost time, followed. 54 N. L. R. B. 1253. The Circuit Court of Appeals for the Fifth Circuit reversed the Board, 143 F. 2d 67, and we granted certiorari because of conflict with the *Republic* case, 323 U. S. —.

These cases bring here for review the action of the National Labor Relations Board in working out an adjustment between the undisputed right of self-organization assured to employees under the Wagner Act and the equally undisputed right of employers to maintain discipline in their establishments. Like so many others, these rights are not unlimited in the sense that they can be exercised without regard to any duty which the existence of rights in others may place upon employer or employee. Opportunity to organize and proper discipline are both essential elements in a balanced society.

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The Wagner Act did not undertake the impossible task of specifying in precise and unmistakable language each incident which would constitute an unfair labor practice. On the contrary that Act left to the Board the work of applying the Act's general prohibitory language in the light of the infinite combinations of events which might be charged as violative of its terms. Thus a "rigid scheme of remedies" is avoided and administrative flexibility within appropriate statutory limitations obtained to accomplish the dominant purpose of the legislation. *Phelps Dodge Corp. v. Labor Board*, 313 U. S. 177, 194. So far as we are here concerned that purpose is the right of employees to organize for mutual aid without employer interference. This is the principle of labor relations which the Board is to foster.

The gravamen of the objection of both *Republic* and *Le Tourneau* to the Board's orders is that they rest on a policy formulated without due administrative procedure. To be more specific it is that the Board cannot substitute its knowledge of industrial relations for substantive evidence. The contention is that there must be evidence before the Board to show that the rules and orders of the employers interfered with and discouraged union organization in the circumstances and situation of each company. Neither in the *Republic* nor the *Le Tourneau* cases can it properly be said that there was evidence or a finding that the plant's physical location made solicitation away from company property ineffective to reach prospective union members. Neither of these is like a mining or lumber camp where the employees pass their rest as well as their work time on the employer's premises, so that union organization must proceed upon the employer's premises or be seriously handicapped.³

The National Labor Relations Act creates a system for the organization of labor with emphasis on collective bargaining by employees with employers in regard to labor relations which affect commerce. An essential part of that system is the provision for the prevention of unfair labor practices by the employer which might interfere with the guaranteed rights. The method for prevention of unfair labor practices is for the Board to hold a hearing on a complaint which has been duly served upon the employer

³ See Sixth Annual Report, National Labor Relations Board, pp. 43, 44; *Re Harlan Fuel Co., et al.*, 8 N. L. R. B. 25, 28, 63; *Re West Kentucky Coal Co., et al.*, 10 N. L. R. B. 88, 105-6, 133; *Re Weyerhaeuser Timber Co., et al.*, 31 N. L. R. B. 258, 262, 267, 270; cf. *Labor Board v. Waterman S. S. Co.*, 309 U. S. 206, 224.

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who is charged with an unfair labor practice. At that hearing the employer has the right to file an answer and to give testimony. This testimony, together with that given in support of the complaint, must be reduced to writing and filed with the Board. The Board upon that testimony is directed to make findings of fact and dismiss the complaint or enter appropriate orders to prevent in whole or in part the unfair practices which have been charged. Upon the record so made as to testimony and issues, courts are empowered to enforce, modify or set aside the Board's orders,⁴ subject to the limitation that the findings of the Board as to facts, if supported by evidence, are conclusive.

Plainly this statutory plan for an adversary proceeding requires that the Board's orders on complaints of unfair labor practices be based upon evidence which is placed before the Board by witnesses who are subject to cross-examination by opposing parties.⁵ Such procedure strengthens assurance of fairness by requiring findings on known evidence. *Ohio Bell Tel. Co. v. Comm'n*, 301 U. S. 292, 302; *United States v. Abilene & Southern Ry. Co.*, 265 U. S. 274, 288. Such a requirement does not go beyond the necessity for the production of evidential facts, however, and compel evidence as to the results which may flow from such facts. *Market St. Ry. Co. v. Railroad Com'n of California, et al.*; Nos. 510-511, this Term, slip opinion p. 8. An administrative agency with power after hearings to determine on the evidence in adversary proceedings whether violations of statutory commands have occurred may infer within the limits of the inquiry from the proven facts such conclusions as reasonably may be based upon the facts proven. One of the purposes which lead to the creation of such boards is to have decisions based upon evidential facts under the particular statute made by experienced officials with an adequate appreciation of the complexities of the subject which is entrusted to their administration. *Labor Board v. Virginia Power Co.*, 314 U. S. 469, 479; *Labor Board v. Hearst Publications*, 322 U. S. 111, 130.

In the *Republic Aviation Corporation* case the evidence showed that the petitioner was in early 1943 a non-urban manufacturing

⁴ *Labor Board v. Jones & Laughlin*, 301 U. S. 1; 49 Stat. 449, 452-455, 647 to 10 inclusive.

⁵ This is not a statutory administrative hearing to reach a basis for action akin to legislation. See *Norwegian Nitrogen Co. v. United States*, 288 U. S. 294, 304-319.

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establishment for military production which employed thousands. It was growing rapidly. Trains and automobiles gathered daily many employees for the plant from an area on Long Island, certainly larger than walking distance. The rule against solicitation was introduced in evidence and the circumstances of its violation by the dismissed employee after warning was detailed.

As to the employees who were discharged for wearing the buttons of a union steward, the evidence showed in addition the discussion in regard to their right to wear the insignia when the union had not been recognized by the petitioner as the representative of the employees. Petitioner looked upon a steward as a union representative for the adjustment of grievances with the management after employer recognition of the stewards' union. Until such recognition petitioner felt that it would violate its neutrality in labor organization if it permitted the display of a steward button by an employee. From its point of view, such display represented to other employees that the union already was recognized.

No evidence was offered that any unusual conditions existed in labor relations, the plant location or otherwise to support any contention that conditions at this plant differed from those occurring normally at any other large establishment.

The *Le Tourneau Company of Georgia* case also is barren of special circumstances. The evidence which was introduced tends to prove the simple facts heretofore set out as to the circumstances surrounding the discharge of the two employees for distributing union circulars.

These were the facts upon which the Board reached its conclusions as to unfair labor practices. The Intermediate Report in the *Republic Aviation* case, 51 N. L. R. B. at 1195, set out the reason why the rule against solicitation was considered inimical to the right of organization.⁶ This was approved by the Board, *Id.* 1186. The Board's reasons for concluding that the petitioner's insistence that its employees refrain from wearing steward buttons

⁶ 51 N. L. R. B. 1195.

"Thus, under the conditions obtaining in January 1943, the respondent's employees, working long hours in a plant engaged entirely in war production and expanding with extreme rapidity, were entirely deprived of their normal right to 'full freedom of association' in the plant on their own time, the very time and place uniquely appropriate and almost solely available to them therefor. The respondent's rule is therefore in clear derogation of the rights of its employees guaranteed by the Act."

appear at page 1187 of the report.⁷ In the *Le Tourneau Company* case the discussion of the reasons underlying the findings was much more extended. 54 N. L. R. B. 1253, 1258, *et seq.* We insert in the note below a quotation which shows the character of the Board's opinion.⁸ Furthermore, in both opinions of the Board full citation of authorities was given including *Matter of Leyton Packing Company*, 49 N. L. R. B. 828, 50 N. L. R. B. 355, hereinafter referred to.⁹

The Board has fairly, we think, explicated in these cases the theory which moved it to its conclusions in these cases. The excerpts from its opinions just quoted show this. The reasons why it has decided as it has are sufficiently set forth. We cannot agree, as Republic urges, that in these present cases reviewing courts are left to "sheer acceptance" of the Board's conclusions or that its formulation of policy is "cryptic." See *Eastern-Central Motor Carriers Ass'n v. United States*, 321 U. S. 194, 209.

Not only has the Board in these cases sufficiently expressed the theory upon which it concludes that rules against solicitation or prohibitions against the wearing of insignia must fall as inter-

⁷ We quote an illustrative portion. 51 N. L. R. B. 1187-88: "We do not believe that the wearing of a steward button is a representation that the employer either approves or recognizes the union in question as the representative of the employees, especially when, as here, there is no competing labor organization in the plant. Furthermore, there is no evidence in the record herein that the respondent's employees so understood the steward buttons or that the appearance of union stewards in the plant affected the normal operation of the respondent's grievance procedure. On the other hand, the right of employees to wear union insignia at work has long been recognized as a reasonable and legitimate form of union activity, and the respondent's curtailment of that right is clearly violative of the Act."

⁸ 54 N. L. R. B. at 1259-60: "As the Circuit Court of Appeals for the Second Circuit has held, 'It is not every interference with property rights that is within the Fifth Amendment and . . . Inconvenience or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining.' The Board has frequently applied this principle in decisions involving varying sets of circumstances, where it has held that the employer's right to control his property does not permit him to deny access to his property to persons whose presence is necessary there to enable the employees effectively to exercise their right to self-organization and collective bargaining, and in those decisions which have reached the courts, the Board's position has been sustained. Similarly, the Board has held that, while it was within the province of an employer to promulgate and enforce a rule prohibiting union solicitation during working hours, it was not within the province of an employer to promulgate and enforce a rule prohibiting union solicitation by an employee outside of working hours, although on company property, the latter restriction being deemed an unreasonable impediment to the exercise of the right to self-organization."

⁹ 51 N. L. R. B. 1186, 1187, at note 1 and 54 N. L. R. B. 1253, 1260, at notes 6 and 7.

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ferences with union organization but in so far as rules against solicitation are concerned, it had theretofore succinctly expressed the requirements of proof which it considered appropriate to outweigh or overcome the presumption as to rules against solicitation. In the *Peyton Packing Company* case, 49 N. L. R. B. 828, at 843, hereinbefore referred to, the presumption adopted by the Board is set forth.¹⁰

Although this definite ruling appeared in the Board's decisions, no motion was made in the court by Republic or Le Tourneau after the Board's decisions for leave to introduce additional evidence to show unusual circumstances involving their plants or for other purposes.¹¹ Such a motion might have been granted by the Board or court in view of the fact that the Intermediate Report in the *Republic Aviation* case was dated May 21, 1943, and that in *Le Tourneau* November 11, 1943, while the opinion in the *Peyton Packing Company* case was given as late as May 18, 1943. We perceive no error in the Board's adoption of this presumption.¹² The Board had previously considered similar rules in industrial establishments and the definitive form which the *Peyton Packing Company* decision gave to the presumption was the product of the Board's appraisal of normal conditions about indus-

¹⁰ 49 N. L. R. B. at 843-44: "The Act, of course, does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time. Working time is for work. It is therefore within the province of an employer to promulgate and enforce a rule prohibiting union solicitation during working hours. Such a rule must be presumed to be valid in the absence of evidence that it was adopted for a discriminatory purpose. It is no less true that time outside working hours, whether before or after work, or during luncheon or rest periods, is an employee's time to use as he wishes without unreasonable restraint, although the employee is on company property. It is therefore not within the province of an employer to promulgate and enforce a rule prohibiting union solicitation by an employee outside of working hours, although on company property. Such a rule must be presumed to be an unreasonable impediment to self-organization and therefore discriminatory in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline."

¹¹ 49 Stat. 454-55, Sec. 10(e):

"If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript."

¹² Compare *National Labor Relations Board v. Regal Knitwear Co.*, 140 F. 2d 746, affirmed on another ground, *Regal Knitwear Co. v. Labor Board*, No. 86, this Term, decided January 29, 1945; *Crichton v. United States*, 56 F. Supp. 876, 889.

trial establishments.¹³ Like a statutory presumption or one established by regulation, the validity, perhaps in a varying degree, depends upon the rationality between what is proved and what is inferred.¹⁴

In the *Republic Aviation* case, petitioner urges that irrespective of the validity of the rule against solicitation, its application in this instance did not violate Section 8(3), note 1, *supra*, because the rule was not discriminatorily applied against union solicitation but was impartially enforced against all solicitors. It seems clear, however, that if a rule against solicitation is invalid as to union solicitation on the employer's premises during the employee's own time, a discharge because of violation of that rule discriminates within the meaning of Section 8(3) in that it discourages membership in a labor organization.

Republic Aviation Corporation v. National Labor Relations Board is affirmed.

National Labor Relations Board v. Le Tourneau Company of Georgia is reversed.

Mr. Justice ROBERTS dissents in each case.

¹³ *Re Denver Tent and Awning Co.*, 47 N. L. R. B. 586, 588; *Re United States Cartridge Co., et al.*, 47 N. L. R. B. 896, 897; *Re Carter Carburetor Corp.*, 48 N. L. R. B. 354, 356; *Re Scullin Steel Co.*, 49 N. L. R. B. 405, 411. See also for comparison the later cases of *Re Dallas Tank & Welding Co., Inc.*, 51 N. L. R. B. 1315; *Re Johnson-Stephens & Shinkle Shoe Co.*, 54 N. L. R. B. 189, 192.

¹⁴ *Mobile, J. & K. Co. v. R. R. v. Turnipseed*, 219 U. S. 35, 43; *Western & Atlantic R. Co. v. Henderson*, 279 U. S. 639, 642; *Helvering v. Rankin*, 295 U. S. 123, 129. Compare *Tot v. United States*, 319 U. S. 463.